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IMPACT ASSESSMENT REPORT

Accompanying the document

COMMUNICATION FROM THE COMMISSION

**Guidelines on the application of EU competition law to collective agreements regarding
the working conditions of solo self-employed persons**

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Glossary

Term	Meaning or definition ¹
collective bargaining	refers broadly to collective negotiations and/or agreements aiming at improving working conditions and not to its narrower sense under labour law.
collective agreement	refers to agreements negotiated and concluded collectively between solo self-employed people and their counterparty/-ies to the extent that they, by their nature and purpose, concern the working conditions of such solo self-employed people.
digital (labour) platform²	refers to any natural or legal person providing a commercial service which meets all of the following requirements: (i) it is provided, at least in part, at a distance through electronic means, such as a website or a mobile application; (ii) it is provided at the request of a recipient of the service; and (iii) it involves, as a necessary and essential component, the organisation of work performed by individuals, irrespective of whether that work is performed online or in a certain location.
people working through platforms³	refers to any individual offering services through platforms, irrespective of the contractual designation of the relationship between that individual and the digital labour platform.
solo self-employed people	refers to people who do not have an employment contract or employment relationship and who rely primarily on their own personal labour for the provision of the services concerned.
false self-employed people	refers to people declared to be self-employed while fulfilling the characteristics of an employment relationship.
economically dependent solo self-employed people	refers to solo self-employed people who provide their services exclusively or predominantly to one counterparty.
solo self-employed people working “side-by-side”	Refers to solo self-employed people who perform the same or similar tasks “side-by-side” with workers for the same counterparty.

¹ For the sake of convenience this glossary explains how certain terms used should be understood in the present report.

² Throughout the report, the term is used interchangeably with “platform”.

³ The term “platform worker” is only used as an equivalent when quoting documents which contain such term.

1. INTRODUCTION

1.1. Political and legal context

In 2020, approximately 19.5 million people in the EU, amounting to 6.1 % of the EU population aged 18-74, earned their living in the off-line economy as self-employed people working on their own,⁴ that is to say as self-employed people without worker(s). In addition to these self-employed people in the off-line economy, the number of people working through platforms has grown very rapidly. Between December 2020 and May 2021, in total 28.3 million people in the EU worked via digital platforms more than sporadically.⁵⁶

The relatively high level of self-employment in the EU is influenced by the global process of subcontracting and outsourcing of business and personal service activities as well as, more recently, by the digitalisation of the production processes including the rise of the platform economy. While this development has increased the flexibility and accessibility of the labour market, it has also, in some cases, led to difficult working conditions in the platform economy and beyond.⁷

The Commission is committed to ensure dignified and proper working conditions for everyone in Europe, in line with the European Pillar of Social Rights.⁸ With regard to new forms of work and platform work in particular, the Commission stated in the New Industrial Strategy for Europe,⁹ that these must come with modern and improved forms of protections. On 9 December 2021, the Commission put forward a proposal for a Directive on improving working conditions in platform work¹⁰ (“Platform Work Directive”).¹¹

Collective negotiations and bargaining is an important tool to improve working conditions.¹² However, under the competition rules, only workers or false self-employed people can collectively bargain without risking an infringement of Article 101(1) of the Treaty on the Functioning of the European Union (“the Treaty”) which prohibits anticompetitive agreements between undertakings.

Against this backdrop, the European Parliament has called for a broader collective bargaining coverage. In a 2019 Resolution,¹³ it called for a coordinated EU initiative to ensure labour and

⁴ Based on the European Union Labour Force Survey and including all types of self-employed working on their own. Available [online](#).

⁵ “Sporadically” refers to situations of people working through platforms less than once a month.

⁶ PPMI (2021), Study to support the impact assessment of an EU initiative on improving working conditions in platform work. Available [online](#).

⁷ See Wire Report co-funded by the European Commission, Independent Workers and Industrial relations in Europe (2018). Available [online](#).

⁸ European Commission, European Pillar of Social Rights. Available [online](#).

⁹ European Commission, European industrial strategy. Available [online](#).

¹⁰ Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work, COM(2021) 762 final, Brussels, 9.12.2021. Available [online](#).

¹¹ See below, section 1.2.

¹² European Parliament, Report on a strong social Europe for Just Transitions (2020/2084(INI)). Committee on Employment and Social Affairs. Available [online](#).

¹³ European Parliament resolution of 10 October 2019 on employment and social policies of the euro area (2019/2111(INI)). Available [online](#).

social rights and collective agreement coverage for service providers through digital platforms. Further, in its Recommendation of 17 December 2020 on a strong social Europe for Just Transitions¹⁴, the European Parliament called on the Commission to, among others, clarify platform-based workers' right to organise themselves, to be represented by trade unions and to negotiate collective agreements, including for the self-employed people. The Parliament also urged the Commission to come up with a targeted revision of EU competition law so as to allow collective price-setting for the precarious self-employed people, in order to ensure a better balance in bargaining power and a fairer internal market. Moreover, in its Resolution of 16 September 2021, the Parliament expressed its concerns about the asymmetrical relationships between digital labour platforms and workers and regretted the legal difficulties in collective representation faced by service providers through digital platforms. It is convinced that EU competition law must not hinder the improvement of the working conditions and social protection of solo self-employed people providing their services through digital platforms through collective bargaining.¹⁵

In its Recommendation of 8 November 2019, the Council of the EU recommended to Member States to provide access to adequate social protection to all workers and self-employed individuals in respect of a number of benefits. One of the tools to achieve social protection coverage is collective bargaining.¹⁶

In this context, the present initiative was launched on 30 June 2020 to ensure that EU competition law does not stand in the way of collective negotiations and agreements of certain self-employed people who may have little influence over their working conditions.¹⁷

This competition law initiative does not alter the collective bargaining modalities in force in each Member State. Nevertheless, by bringing more clarity as to the scope of the application of EU competition law with regard to collective agreements by self-employed people, this initiative complements the above-mentioned EU actions in this field.

1.2. Interplay with the Commission proposal for a Directive on improving the working conditions in platform work (Platform Work Directive)

The present initiative concerns the application of EU competition law to the collective negotiations and agreements of certain self-employed persons who face difficulties in influencing their working conditions. As explained further in Section 2, self-employed persons, even when working on their own, are considered undertakings and therefore risk infringing Article 101 TFEU if they negotiate collectively their working conditions.

¹⁴ European Parliament, Report on a strong social Europe for Just Transitions (2020/2084(INI)). Committee on Employment and Social Affairs. Available [online](#).

¹⁵ European Parliament resolution of 16 September 2021 on fair working conditions, rights and social protection for platform workers – new forms of employment linked to digital development (2019/2186(INI)). Available [online](#).

¹⁶ Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed (2019/C 387/01, ST/12753/2019/INIT). Available [online](#).

¹⁷ European Commission. Competition: The European Commission launches a process to address the issue of collective bargaining for the self-employed. Press Release. 30 June 2020. Available [online](#).

All persons who do not have an employment contract or who are not in an employment relationship are considered self-employed. However, pursuant to the judgment of the Court of Justice in Case C-413/13 *FNV Kunsten*, a self-employed person may be considered misclassified (“false self-employed”), if: (i) he/she acts under the direction of his/her employer as regards, in particular, his/her freedom to choose the time, place and content of his/her work; (ii) does not share the employer’s commercial risks; and (iii) for the duration of the relationship, forms an integral part of the employer’s undertaking and thus, an economic unit with that undertaking. The Court has clarified that similarly to a worker, a false self-employed person does not infringe Article 101 TFEU when participating in collective bargaining negotiations. Nevertheless, until the self-employed person has been reclassified as a worker, this person does not have the legal certainty about how competition law may apply to his/her collective negotiations and agreements. Therefore, the present initiative may benefit both genuine self-employed persons (i.e. self-employed persons who would not fulfil the criteria set out by the Court’s case law to be considered misclassified) and false self-employed persons, insofar as they have not yet been reclassified as workers.

In the area of platform economy, the Commission proposal for a Platform Work Directive¹⁸ includes measures to correctly determine the employment status of people working through digital labour platforms.¹⁹ It seeks to ensure that digital labour platforms, which control the performance of work, are presumed as employers, and therefore, the people working through them can enjoy the labour and social rights that come with the status of worker (including access to collective bargaining).

By contrast, as explained above, the Commission’s present initiative does not concern people already classified as workers.²⁰ A person requalified as a worker, will not anymore benefit from the present initiative because workers have statutory access to collective bargaining. Therefore, following the adoption and implementation of the Platform Work Directive, it can be expected that false self employed persons working through digital labour platforms will not benefit anymore from the present initiative, but from the Platform Work Directive as on that basis they will be qualified as workers. Genuine solo self-employed people will benefit from the present initiative as long as they fulfil the conditions set in it.²¹

¹⁸ For an overview of the proposal for a Platform Work Directive please see Annex 5 of this report.

¹⁹ It also includes rights for both workers and self-employed people regarding algorithmic management.

²⁰ It should be noted that while the present initiative bases itself on the same definition of digital labour platform as the proposal for a Platform Work Directive, it does not require that the control criteria set out in the proposal are fulfilled (since in such a case there is even a presumption of an employee relationship).

²¹ According to the Commission’s impact assessment report on the Platform Work Directive (section 2.2.1) from the total of 28.3 million service providers through digital platforms “circa 5.5 million are estimated to be subject to a certain degree of control from the platform they work through (2.3 million on-location, 3.2 million online). Given that around 90% of people working through platforms are estimated to be formally self-employed people, it is likely that most of those 5.5 million people are misclassified”. Out of those 28.3 million service providers through digital platforms, 21.3 million at EU level rely on platforms as their main or secondary activity in 2021. Therefore, even assuming that all 5.5 million self-employed people offering services through platforms identified by the impact assessment report of the Platform Work Directive as potentially false self-employed people turn out to be indeed false self-employed people and are later on requalified as workers, that still leaves a scope of 15.8 million self-employed people offering services through platforms that would fall under the scope of the present initiative.

2. PROBLEM DEFINITION

2.1. What is the problem?

From an EU competition law standpoint, workers are considered as incorporated into the undertaking with which they have an employment relationship.²² Therefore, Article 101 of the Treaty does not apply to them, but only to the undertaking that employs them. When undertakings, as employers, jointly enter into collective agreements with trade unions representing workers to improve working conditions (including salaries), these specific agreements fall outside the scope of Article 101 of the Treaty. Indeed, the social policy objective pursued by these agreements would otherwise be seriously undermined.²³

The situation of self-employed people is different, as they are in principle considered “undertakings” carrying out their activity on the market as independent economic operators in relation to their principal.²⁴

The binary distinction between workers and self-employed people on which the application of competition rules relies, means that self-employed people may infringe EU competition rules, if they negotiate collectively their working conditions. This problem of legal uncertainty affects particularly some self-employed working on their own, i.e. without workers, who rely on their personal labour for making a living (hereafter “solo self-employed”). They have most difficulties in influencing their working conditions (see section 2.2.1).²⁵

2.2. What are the problem drivers?

There are three main drivers of the problem set out in Section 2.1: The fact that some solo self-employed people have little influence over their working conditions (driver 1), the fact that self-

See Commission Staff Working Document - Impact Assessment Report, accompanying the document Proposal for a Directive of the European Parliament and of the Council to improve the working conditions in platform work in the European Union, SWD(2021) 396 final/2, Brussels, 10.12.2021. Available [online](#).

²² See the Court’s judgment in case C-22/98 *Jean-Claude Becu*, para 26.

²³ See the Court’s judgment in case C-67/96 *Albany*, paras 59-60.

²⁴ See the Court’s judgment in case C-35/96 *Commission v Italy*, paras 36-37 and in case C-413/13 *FNV Kunsten Informatie en Media*, para 27.

²⁵ On average, monthly earnings of self-employed people without workers are substantially lower than for those with workers which is an indication that they lack the power to influence their working conditions, see Eurofound (2017), *Exploring self-employment in the European Union*, Chapter 1. Available [online](#). This indication is confirmed by the OECD finding that the risk of having precarious working conditions is particularly high for the self-employed people without workers, OECD (2019), *OECD Employment Outlook 2019: The Future of Work*. Available [online](#). Furthermore, authors have highlighted that self-employed people who are making a living without being able to rely on substantial capital assets, but only on the provision of their own labour are often in a situation close to workers when it comes to negotiating the conditions under which they will provide their output, see N. Contouris and V. De Stefano, *A Thematic Working Paper for the 2020 Workshop of the European Centre of Expertise (ECE) in the field of labour law, employment and labour market policies: Competition Law and Collective Bargaining - Labour Law Perspectives on the personal and material scope of the right to bargain collectively* (2020). See also CLES Research Paper Series 3/2019 *Rethinking the Competition Law/Labour Law Interaction Promoting a Fairer Labour Market* Ioannis Lianos, Nicola Countouris, Valerio de Stefano August 2019. Available [online](#).

employed people are in principle considered as “undertakings” under EU competition law (driver 2) and the fact that there is no EU-wide guidance as to when self-employed people may enter into collective agreements with their counterparties on their working conditions (driver 3).

2.2.1. Driver 1: Some solo self-employed people have little influence over their working conditions

As mentioned in section 2.1, some solo self-employed people may have difficulties to influence their working conditions. This is either because: i) they are not sufficiently independent from their counterparty and are ultimately in a position comparable to that of workers;²⁶ or ii) although independent from their counterparty, they are nevertheless in an imbalanced negotiating position.²⁷

Eurofound estimates that around 8 million self-employed people in the EU (roughly the size of Austria’s population), are generally more dependent and have less autonomy over their work.²⁸ The OECD also finds that some solo self-employed people might be in a situation of unbalanced negotiating power towards certain firms/buyers of labour with monopsony power,²⁹ leading them to be price-takers and have little say over their working conditions.³⁰

The situation has been exacerbated with the evolution of labour markets, in particular the increase in the number of people working through platforms and other atypical forms of work. Indeed,

²⁶ A recent OECD study pointed out that this “grey zone” between dependent workers and independent self-employed people raises fairness problems for self-employed people who share some characteristics and vulnerabilities with workers, but cannot use collective bargaining because of competition law. CEPS, EFTHEIA, and HIVA-KU Leuven (2019). Study to gather evidence on the working conditions of platform workers VT/2018/03. Available [online](#). The study has also found that a significant group of people working through platforms strongly depends on the income gained through these activities. See also Urzi Brancati et al. (2020). New evidence on platform workers in Europe. Available [online](#). See also Giorgio Monti (2021), Collective labour agreements and EU competition law: five reconfigurations, European Competition Journal. Available [online](#).

²⁷ See OECD (2020), The future of work, Expert Meeting on Collective Bargaining for Own-Account Workers (Summary report). Available [online](#). OECD (2019), Negotiating Our Way Up: Collective Bargaining in a Changing World of Work, Available [online](#). OECD (2019), OECD Employment Outlook 2019: The Future of Work. Available [online](#).

²⁸ Eurofound (2017), Exploring self-employment in the European Union, Chapter 1. Available [online](#).

²⁹ “The term ‘monopsony’ was originally used in 1933 by Joan Robinson in *The Economics of Imperfect Competition*, in parallel to the term ‘monopoly’, to indicate the existence of a single buyer of a specific good or service in a market. [...] In labour markets, the term ‘monopsony’ is often more broadly intended to include monopsony and oligopsony and, for the purposes of this paper, is defined as “any case where firms have some labor market power that allows them to determine wages”. On the demand side of labour markets (i.e. the labour input market where employers buy labour), therefore, there may be employers with large market power that are able to pay workers less than the competitive level by hiring fewer workers. Additionally, there is monopsony in labour input markets also when the employer/buyer of labour has the ability to worsen the employment terms and conditions by reducing employment, thus also driving wages below competitive levels”. See OECD (2020), Competition in Labour Markets, Chapter 1 and sources cited in the report. Available [online](#).

³⁰ See OECD (2020), The future of work, Expert Meeting on Collective Bargaining for Own-Account Workers (Summary report). Available [online](#). OECD (2019), Negotiating Our Way Up: Collective Bargaining in a Changing World of Work, Available [online](#). OECD (2019), OECD Employment Outlook 2019: The Future of Work. Available [online](#).

studies show that most people working through platforms lack sufficient negotiating power and as a result, do not earn sufficient income through their platform activities to make a living.³¹

Nevertheless, the lack of negotiating power affects solo self-employed across sectors.³² This was confirmed during the Open Public Consultation launched in March 2021 (“the Open Public Consultation” or “the OPC”). 61.6% of the respondents replied that solo self-employed people do lack such power across all sectors, 25.8% replied that they only do in specific sectors,³³ and only 12.5% of respondents replied that solo self-employed people do not lack the power to negotiate.³⁴

2.2.2. *Driver 2: Self-employed people are in principle undertakings*

From a competition law perspective, self-employed people are in principle considered undertakings as they carry out their activity on the market as independent economic operators in relation to their principal.³⁵ Therefore, agreements among self-employed people fall in principle within the scope of Article 101 of the Treaty.³⁶

However, as indicated in Sections 2.1 and 2.2.1, some self-employed people may have little bargaining power to influence their working conditions. They may not satisfy the conditions to be

³¹ CEPS, EFTHEIA, and HIVA-KU Leuven (2019). Study to gather evidence on the working conditions of platform workers VT/2018/03. Available [online](#). The study has also found that a significant group of people working through platforms strongly depends on the income gained through those activities. See also Urzi Brancati et al. (2020). New evidence on platform workers in Europe. Available [online](#).

³² A study examining in particular, the situation in the arts, media, and entertainment sectors, found that people in this sector cannot claim a fair remuneration for the exploitation of their works “[w]ithout collective bargaining power”, to the extent “making it impossible [for them] to earn a decent living”, Camilo Rubiano and Shiomit Ravid (2013). Collective bargaining and competition law: a comparative study on the media, arts and entertainment sectors. Available [online](#).

³³ A diverse group of respondents answered that certain self-employed people lack negotiating power across all or at least in specific sectors. Such respondents include unions, freelancer associations, public authorities and some employers, including the platform company Delivery Hero SE.

³⁴ Initially, 19 respondents indicated that solo self-employed people do not lack the power to negotiate. However, the detailed answers of four of those respondents (an individual self-employed, a union, a research center and a freelancers’ association) show that they meant that solo self-employed do lack the power to negotiate. Most of those who claim that solo self-employed do not lack the power to negotiate are employers organizations. However their detailed answers show a more nuanced approach: UNIZO (BE) and the Confédération de Petites et Moyennes Entreprises (FR) admit that solo self-employed are in a weak negotiating position but, according to them this situation is not different to that of any other SME. Also, the Norwegian Competition Authority indicates that the lack of negotiating power must not be presumed, but it is likely to occur in case of digital labour platforms. The Danish Union 3F and the French Union des Entreprises de Proximité both argue that solo self-employed must be free to set their prices and if they lack the independence to do so, they are likely to be “false” self-employed. Finally, the Estonian platform Bolt explains that existing legislation (such as the P2B Regulation) already covers the relationship between individuals and the platforms through which they provide services.

³⁵ See the Court’s judgement in case C-35/96 *Commission v Italy*, paras 36-37 and in case C-413/13 *FNV Kunsten Informatie en Media*, para 27.

³⁶ The Commission has in the past taken action against unilateral collective agreements between self-employed fixing together the price they charge their clients, and thus restricting competition between themselves. See in that sense the Commission decisions in cases COMP/38549 *Belgian Architects Association* or COMP/39510 *Ordre National des Pharmaciens* and the appeal on that decision before the General Court in case T-90/11 *Ordre national des pharmaciens (ONP)*.

considered workers (which would give them access to collective bargaining rights), while they may not be entirely independent from their principal either, or have sufficient bargaining power to influence their working conditions.

“False” self-employed should have the right to enter into collective bargaining agreements. In the case *FNV Kunsten Informatie en Media v Staat der Nederlanden*,³⁷ the Court of Justice of the European Union (CJEU) recognized that in “today’s economy it [was] not always easy to establish the status of some self-employed contractors as ‘undertakings’ and ruled that self-employed people are “false” self-employed people if in reality they amount to workers. In such a case, a collective labour agreement that sets minimum fees for these workers is not within the scope of Article 101 of the Treaty.

However, it is always for the national court to determine whether a self-employed person is a “false” self-employed person. Therefore, without a court ruling in each individual case, even solo self-employed people that qualify as “false” self-employed may still refrain from participating in collective negotiations and/or agreements due to the risk of a competition law infringement.

2.2.3. *Driver 3: Lack of guidance at EU level on the application of EU competition law on collective agreements*

There is currently no guidance at EU level on whether self-employed people may engage in collective negotiations on their working conditions without infringing EU competition rules.³⁸ In Ireland, national competition law provides an exception to the application of the national equivalent to Article 101 of the Treaty so that some self-employed people can bargain collectively if the agreements are not found to have an appreciable effect on intra EU trade.³⁹ In the Netherlands, the national competition authority has adopted guidelines according to which they will not enforce the national equivalent to Article 101 of the Treaty against (some) self-employed people under certain conditions.⁴⁰ However, since EU competition policy falls under the European Union’s exclusive competence, Member States are unable to give sufficient certainty for the application of EU

³⁷ See the Court’s judgement C-413/13 *FNV Kunsten Informatie en Media*.

³⁸ As set out in Section 2.2.2, on the basis of the CJEU case law, alongside workers only false self-employed can collectively bargain. However, before achieving a requalification of their employment status, even false self-employed cannot be certain they will not risk an infringement of EU competition law.

³⁹ See Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (now 101 and 102) OJ L 1, 4.1.2003. Under that Regulation, NCAs have to apply Article 101 of the Treaty in addition to national competition law where an agreement or practice may affect trade between Member States. However, if the agreements or practices are not capable of appreciably affecting trade between Member States, NCAs only apply national competition law. See in that sense Commission Notice — Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty (now 101 and 102) OJ C 101, 27.4.2004, p. 81–96. In Ireland, the 2017 Competition (Amendment) Act Ireland, provided for a general exclusion from national competition law for voice-over actors, session musicians and freelance journalists. The Irish Competition (Amendment) Act 2017 is available [online](#).

⁴⁰ See the Authority for Consumers and Markets (Dutch Competition Authority) (2019) Guidelines on price arrangements between self-employed workers. Available [online](#). See also Ecorys’s Impact Assessment Support Study (“IA Support Study”), Annex 5.

competition law on collective agreements by solo self-employed people that may affect intra EU trade.

At EU level, as noted under sections 2.1 and 2.2.2, the CJEU's case law on the application of EU competition law on collective bargaining is limited to the collective agreements made by workers⁴¹ and people who have been found by a national court to be "false" self-employed people⁴².

Against this background, solo self-employed people who may have little bargaining power over their working conditions, face legal uncertainty and are in need of guidance on when they can bargain collectively without infringing EU competition law.

2.2.4. What is the extent of the problem

As mentioned in Section 1.1, there were around 19.5 million solo self-employed people in 2020. As service providers through digital platforms typically do not report themselves in surveys as being self-employed people,⁴³ this figure should be understood as not including solo self-employed people working through platforms in the EU.⁴⁴ After deducting the number of solo self-employed people who are farmers, shop owners and food sellers and thus not offering labour services the number of solo self-employed people concerned by the initiative, not including people working through platforms, would be around 13 million.⁴⁵

Between December 2020 and May 2021, 28.3 million people in total in the EU worked via digital platforms more than sporadically.⁴⁶ However, many people only rely on the services they offer through platforms for a fraction of their income. The number of people in the EU that rely on platform work as their main or secondary job was 21.3 million in 2021.⁴⁷ These are the people working through platforms that are more likely to be concerned by the problem and the present initiative. After weighting to reflect that around two thirds of these people rely on these activities only as a secondary job, the number of "full time equivalent" people working through platforms would correspond to 14.1 million.⁴⁸

⁴¹ See the Court's judgment in case C-67/96 *Albany*.

⁴² See the Court's judgment C-413/13 *FNV Kunsten Informatie en Media*.

⁴³ According to digital labour platforms active in the EU, 92% of the people working through their platforms are self-employed. Indeed, most platforms do not work with employment contracts. And if platforms work with employment contracts, they are overwhelmingly zero-hours contracts. However, according to Pesole, A., Urzi Brancati, M.C., Fernandez Macias, E., Biagi, F. and Gonzalez Vazquez, I., *Platform Workers in Europe Evidence from the COLLEEM Survey*, EUR 29275 EN, Publications Office of the European Union, Luxembourg, 2018, ISBN 978-92-79-87996-8, doi:10.2760/742789, JRC112157. ("COLLEEM studies") only 5-6% of the platform workers classify themselves as self-employed.

⁴⁴ See IA Support Study, Section 3.2.1, page 60.

⁴⁵ See IA Support Study, Table 11, section 3.4.3.

⁴⁶ PPMI (2021), Study to support the impact assessment of an EU initiative on improving working conditions in platform work. Table 14. Available [online](#).

⁴⁷ PPMI (2021), Study to support the impact assessment of an EU initiative on improving working conditions in platform work. Available [online](#).

⁴⁸ IA Support Study, Table 9, Section 3.4.2. relying on data from PPMI (2021), Study to support the impact assessment of an EU initiative on improving working conditions in platform work. Table 14. Available [online](#). The data from that study are based on a 2021 survey conducted by PPMI and distinguish between three categories

According to a CEPS study based on interviews and desk research, 92% of the people working through platforms are self-employed people.⁴⁹ Other research also confirms that most platforms do not work with employment contracts.⁵⁰ Therefore, the above-mentioned estimates for the number of people working through platforms is likely to be a good approximation for the number of self-employed people working through platforms.

The problem of legal uncertainty may affect self-employed people in different Member States in different degrees/ways as some Member States allow certain self-employed people to collectively bargain, while others do not or do so only partially.⁵¹ However, as explained in Section 2.2.3, national regimes with respect to collective bargaining by self-employed people do not entirely remove the legal uncertainty surrounding the application of EU competition law to such agreements. Actually, the differences in the national regimes can be seen as even increasing the legal uncertainty.⁵²

2.3. Consequences of the problem

Some Member States have extended the right to collectively bargain to certain self-employed people in order to improve their working conditions.⁵³ However, due to the legal uncertainty on the application of competition law to their collective agreements, self-employed people and their counterparties may nevertheless refrain from entering into collective negotiations and agreements that could help the self-employed people to achieve better working conditions.⁵⁴ In other words, the

of platform workers: (1) those that are in “main” platform work, i.e. that work via platforms for at least 20 hours per week or for at least 50% of their income; (2) those that are in “secondary” platform work, i.e. that work via platforms between 10 and 19 hours per week and for between 25% to 50% of their income; (3) those that are in “marginal” platform work meaning that they work via platforms less than 10 hours per week and for less than 25% of their income. The impact assessment for the Platform Work Directive uses the number of platform workers across all three categories as workers under all categories fall under the presumption of employment. The impact assessment of the present initiative instead starts from the number of platform workers in the first two categories, i.e. those in “main” or “secondary” platform work (21.3 million). To convert the figure of 21.3 million platform workers relying on platform work as main or secondary work into “full time equivalent” platform workers, those relying on platform work as a secondary job are given a weight of 0.5. The resulting figure of 14.1 million full time equivalent platform workers then enters the analysis of the (full time equivalent) number of affected individuals presented in Section 7.

⁴⁹ CEPS (2021). Digital labour platform in the EU. Available [online](#).

⁵⁰ De Stefano et al. (2021), Platform work and the employment relationship, Available [online](#).

⁵¹ See section 2. See also the 5 clusters of Member States identified in the IA Support Study, Section 3.4.6 and Annex 5.

⁵² CEPS, EFTHEIA, and HIVA-KU Leuven (2019). Study to gather evidence on the working conditions of platform workers VT/2018/03. Available [online](#).

⁵³ CEPS, EFTHEIA, and HIVA-KU Leuven (2019). Study to gather evidence on the working conditions of platform workers VT/2018/03. Available [online](#). At national level, Member States have different rules as regards the access of self-employed to collective bargaining. Depending on the Member State, solo self-employed may be authorised to bargain collectively, without restrictions (e.g. Poland), may be entitled to do so under labour law on the basis of an economic dependence criterion (e.g. Germany), or on the basis of the specific sectors they work in/the specific category they belong to (e.g. Austria). Other Member States foresee no specific provision relating to collective negotiation for the self-employed. See IA Support Study, Annex 5.

⁵⁴ The majority of Member States has pointed to EU competition law as an obstacle for self-employed people offering services through platforms to organise and bargain collectively on matters related to their working conditions including pay rates, see CEPS, EFTHEIA, and HIVA-KU Leuven (2019). Study to gather evidence on

legal uncertainty may have a chilling effect and discourage collective initiatives, even in Member States that explicitly allow certain self-employed people to collectively bargain.⁵⁵

Many respondents to the Open Public Consultation have also pointed to this chilling effect, either because counterparties refuse to enter in negotiations arguing that they are contrary to competition rules, or because self-employed people do not attempt to undertake such negotiations fearing prosecution. Indeed, 49% (63) of the respondents answered that they were aware of such instances.

Even though some employers and employers' associations do not agree that competition law may be an obstacle,⁵⁶ several associations and unions explained that their members in different Member States had reported several instances where the members themselves or their counterparties refrained from engaging in collective negotiations for fear of infringing competition rules.⁵⁷ Trade

the working conditions of platform workers VT/2018/03. Available [online](#). See also ILO (2021). ILO Flagship Report World Employment and Social Outlook, The role of digital labour platforms in transforming the world of work. Available [online](#). According to this report *“competition law in many countries is thus either an actual or a potential impediment to enabling those platform workers who are self-employed to exercise their right to bargain collectively. This impedes solutions to issues such as pay, working time, evaluation and safety from being developed through this strong form of social dialogue. International work on reconfiguring the application of competition law so that it does not undermine bargaining by vulnerable self-employed workers is needed.”*.

⁵⁵ During the Open Public Consultation, from a number of possible reasons listed, 23% of respondents indicated competition law as the reason why solo self-employed do not benefit from collective bargaining. 18 of the respondents are businesses or businesses associations; 7 qualify themselves as themselves as NGOs, but really seem to be self-employed associations; 5 are public authorities (including the NO, AT, NL and CZ National Competition Authorities) and 31 are Trade Unions (including UNI Europa, ETUC, FNV, 3F, HK).

⁵⁶ For example, Deliveroo's opinion is that the low level of unionisation of platform workers is not due to competition rules. Instead, it is the result of the trade unions' position that platform workers should be reclassified as workers, which, according to the company, the riders on the whole do not want. SME United also indicates that the obstacle is not competition rules, but rather the fact that the concept of collective bargaining is not adapted to the situation of self-employed, who are undertakings. For SME United, it is problematic that some solo self-employed face precarious situations, but this should not be tackled by competition law. The Confederation of German Employers' Associations (Bundesvereinigung der Deutschen Arbeitgeberverbände – BDA), expressed similar opinions, insisting that *“it is not appropriate or necessary to change the existing EU competition rules in order to allow self-employed workers to engage in collective bargaining”*. By contrast, the employers' association Bussiness Europe, in its answer to the Open Public Consultation stated that competition rules should not act as a barrier to self-employed who wish to represent themselves, and to jointly negotiate, and that the European Commission should clarify the application of EU competition rules to collective agreements concluded by self-employed.

⁵⁷ These are UNI Europa; The International Federation of Actors (FIA), Part of the European Arts and Entertainment Alliance (EAEA) made up of FIA, FIM (International Federation of Musicians) and UNI MEI (International Arts and Entertainment Alliance); the Federation of Screenwriters in Europe ; the Belgian Chamber of Translators and Interpreters; ETUC; IndustriAll; the Central Organisation of Finnish Trade Unions (SAK); FNV Campaign Platformwork; the Artists' Association of Finland; the European Federation of Journalists. By way of illustration, some pointed out that in 2019, the Finnish National Conciliator made a specific reference to EU competition law when rejecting to propose a conciliation in relation to a labour dispute involving the remuneration of self-employed translators, as the *“the matter would require legislative changes and is a matter that the legislators can solve within the framework of EU competition law”*. The French authorities also acknowledged that the legal uncertainty about the application of EU competition law could hinder initiatives to improve the self-employed's working conditions.

unions have highlighted that this fear of a competition law infringement exists, even when specific provisions are in place at national level.⁵⁸

This uncertainty may therefore discourage self-employed people from collective negotiations and may affect the effectiveness of national rules foreseeing access to collective bargaining for some self-employed people. Uncertain about whether they may infringe EU competition law, solo self-employed people and their counterparties may be reluctant to make use of the existing national regimes and engage in collective negotiations. This may in turn have an impact on the pay and working conditions of solo self-employed.⁵⁹ It may also affect national legislators' decision-making with regard to collective bargaining rights for some self-employed people who may face difficulties in influencing their working conditions.⁶⁰

In addition, the lack of legal certainty may undermine a coherent and effective implementation of EU law. For example, the Copyright Directive⁶¹ recognises that collective bargaining of authors and performers ("creators"), close to half of which are self-employed people⁶², is one of the possible mechanisms available to the Member States to implement the principle of appropriate and proportionate remuneration for creators where they license or transfer their exclusive rights⁶³ as

⁵⁸ For example, according to the German Association of Independent Performing Arts (Bundesverband Freie Darstellende Künste e.V) *"The provision of §12a TVG [which allow collective bargaining for "worker-like" people] is constantly under attack by employer friendly academics, referring to Art. 101 of the Treaty. Employers/clients and their associations regularly state the potential infringement of competition law as a reason to not enter into collective negotiations. Moreover, workers regularly back away from attempts of collective bargaining and even from preparing collective claims due to fear of infringement There is a grey zone between explicit prohibition by EU competition law and explicit applicability of national exemptions. As a result, however, the lack of clarity hinders agreements and negotiations for the solo self-employed.*

⁵⁹ See Silvia Rainone and Nicola Countouris (2021). Collective bargaining and self-employed workers: the need for a paradigm shift. Available [online](#). The paper notes that "[d]isenfranchising self-employed workers from the right to collective bargaining means accepting that their precarious negotiating position will almost invariably result in degrading working conditions". Stakeholders, such as the Austrian federal chamber of labour, have voiced the concern in reply to the Open Public Consultation, that solo self-employment has led to the creation of 'workers without rights' who are not entitled to a contract, minimum wage, paid leave or unemployment insurance.

⁶⁰ For example, the Spanish legislation allows collective negotiations for economically dependent self-employed, but the same legislation excludes the possibility to collectively negotiate about wages, because that would be contrary to competition law. See *Derechos colectivos del trabajador autónomo dependiente económicamente*. Francisco Trillo, Prof. Derecho del Trabajo y de la Seguridad Social UCLM. Pag. 14 Available [online](#). Academics, have also pointed out the difficulties that national legislators face when addressing collective bargaining of self-employed, Claudia Schubert (2021), *Economically-dependent Workers as Part of a Decent Economy*, p. 37 *"In its current state, European Union competition law constitutes an important barrier for the extension of collective labour rights to any category of the self-employed"*.

⁶¹ Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC.

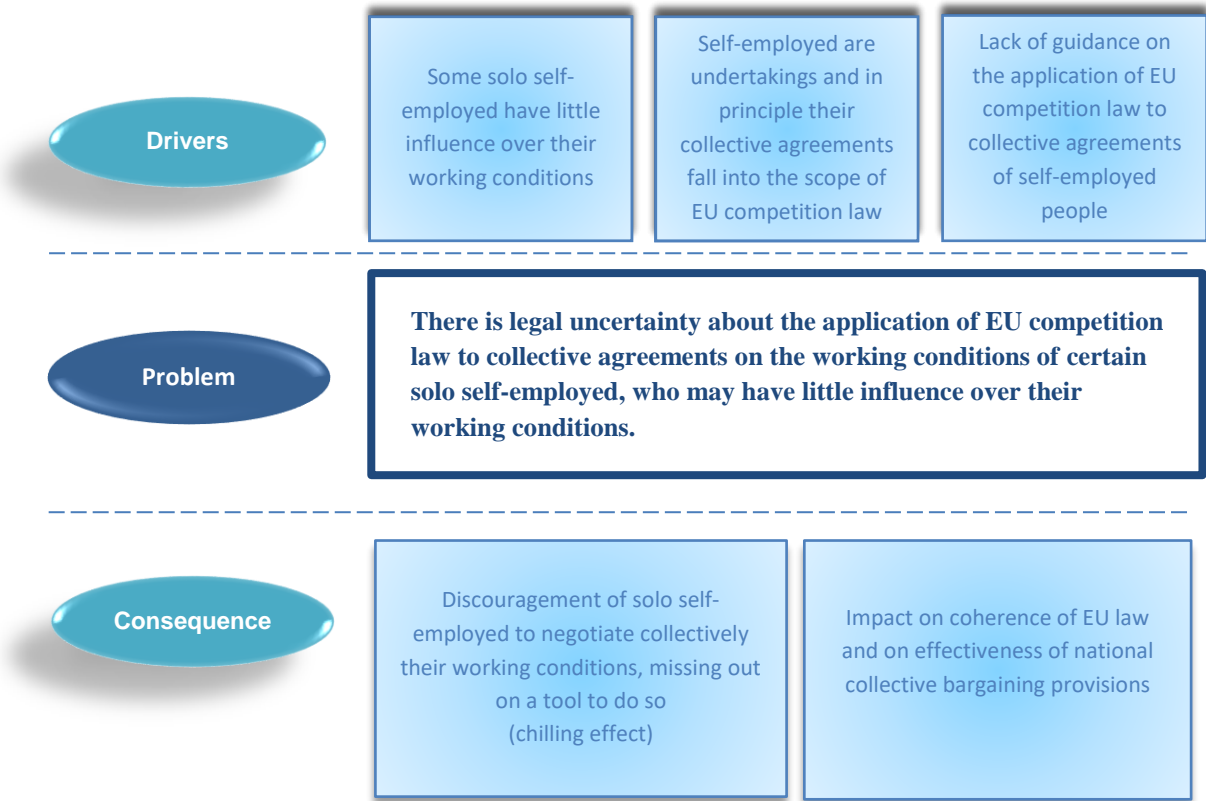
⁶² Around 45-50% of creative and performing artists, authors, journalists and linguists were self-employed in the EU28 in 2018 compared to only around 15% of the total workforce. (Eurostat Culture Statistics, 2019 Edition, Figure 3.9, p.73 available [online](#)).

⁶³ See Article 18 paragraph 2 and the corresponding Recital 73 of the Copyright Directive which states *"Member States should be free to implement the principle of appropriate and proportionate remuneration through different existing or newly introduced mechanisms, which could include collective bargaining and other mechanisms,*

well as to support the related contractual protection measures,⁶⁴ which aim at solving specific issues that creators may face with contractual counterparties in connection with the exploitation of their works. However, Member States as well as stakeholders may be uncertain whether collective bargaining mechanism would be in compliance with EU competition rules.

Ultimately, the result is that solo self-employed people who may have little influence over their working conditions cannot improve their bargaining power.

Table 1– Problem tree



provided that such mechanisms are in conformity with applicable Union law". For example, the Federation of Screenwriters of Europe stressed in their answer to the Open Public Consultation launched in March 2021 the national divergences in the treatment of collective bargaining by copyright holders. Furthermore, in their joint submission to the public consultation launched in December 2021 the ECSA (European Composer and Songwriter Alliance); FERA (Federation of European Screen Directors) and FSE (Federation of Screenwriters in Europe) indicated that *"all over Europe, the legal uncertainty raised by the articulation between competition law and collective agreements has often prevented authors and their contractual counterparts to even contemplate the prospect of a collective agreement and start negotiations"*.

⁶⁴ See Articles 19-22 of the Copyright Directive.

2.4. How will the problem evolve?

In the absence of policy intervention from the EU clarifying when collective agreements by solo self-employed people and their counterparties are compatible with EU competition rules,⁶⁵ the legal uncertainty and the chilling effect would persist (see also Section 5.1).⁶⁶

Moreover, the scale of the problem is likely to increase. The share of solo self-employed people in total employment (other than those working through platforms) has remained relatively stable over the last decade and is likely to remain stable going forward at around 10%.⁶⁷ The number of people working through platforms on the other hand is likely to continue to grow significantly as the transformation of the work place and the increasing trend of digitalization that have enabled the rise can be expected to continue. Platform work was virtually non-existent in 2011 and, by 2017/18 had increased very rapidly with around 2% of the adult population relying on platforms as their main activity and a further 4% relying on platforms as their secondary activity. It has grown further by 2021. Assuming that the current trend would continue until 2025 and that the number of people working through platforms would stabilise thereafter, by 2030 around 4% of the adult population in the EU are expected to rely on platforms as main activity and a further 8% will offer services through platforms as a secondary activity.⁶⁸

There seems to be a correlation across countries, between many forms of non-standard work and poorer job quality, in the form of lower wages, less employment protection, reduced access to employer and social benefits, greater exposure to occupational safety and health risks, lower investments in lifelong learning, and low bargaining power of people working.⁶⁹ Therefore, absent any intervention at EU level, it is likely that an increase in the number of people working through platforms would also translate in an overall decrease in job quality.⁷⁰

⁶⁵ Since EU competition policy is an exclusive competence of the EU, only EU action can clarify the application of the EU competition rules.

⁶⁶ A recent OECD/European Commission survey confirms that addressing the issues raised by new forms of work is a major policy concern among member states. See OECD (2019). Policy Responses to New Forms of Work. Available [online](#).

⁶⁷ IA Support Study, Table 8, Section 3.4.1 based on EU Labour Force Survey (2011, 2020), Ecorys trend extrapolation (2030).

⁶⁸ IA Support Study, Section 3.4.2, Figure 18 (based on COLLEEM data for 2017 and 2018 and Ecorys extrapolation).

⁶⁹ OECD (2019), OECD Employment Outlook 2019: The Future of Work. Available [online](#). Non-standard work encompasses all forms of work that deviate from the “standard” of full-time, open-ended contracts with a single employer. They include, therefore, workers with temporary jobs, part-time contracts, agency work, and those who are self-employed.

⁷⁰ Such a decrease, however, would be limited if the Platform Work Directive is adopted and transposed by Member States. In that situation, people working through digital labour platforms, when the latter control the performance of their work, would benefit from an employment relationship presumption. Bearing the status of “worker” would grant these individuals all the rights linked to the said status and improve their working conditions.

3. WHY SHOULD THE EU ACT?

European competition rules fall under the exclusive competence of the Union pursuant to Article 3(1)(b) of the Treaty. EU action is essential, to address the legal uncertainty surrounding the application of EU competition rules to collective agreements regarding the working conditions of solo self-employed people.

4. OBJECTIVES: WHAT IS TO BE ACHIEVED?

4.1. General objectives

The general objective of the initiative is to avoid that EU competition law stands in the way of collective negotiations and agreements about working conditions for the solo self-employed people who may have little influence over their working conditions. This competition law initiative does not have as an objective to directly improve the working conditions of solo self-employed people.

According to Article 3 of the Treaty on European Union, the application of EU competition rules is founded on the goal of the Union to safeguard that the internal market encompasses a system which ensures that competition is not distorted, promoting in parallel “*a highly competitive social market economy, aiming at full employment and social progress*”.⁷¹ Hence, the pursuance of this general objective shall strike the right balance between economic development and social progress, guaranteeing consumers’ protection and a level playing field.

4.2. Specific objectives

In order to achieve the general objective, this initiative pursues the following specific objectives:

4.2.1. *Identify those solo self-employed people who have little influence over their working conditions*

As indicated above, **the first driver** to the problem lies in the fact that some solo self-employed people, both in the on line and the offline economy, face difficulties in negotiating and influencing their working conditions when providing their services to their counterparties. In order to address this problem, the initiative needs to identify which solo self-employed people may be in this situation, so that the application of competition rules does not stand in their way when they negotiate collectively their working conditions. This exercise must also keep in mind the objective of competition rules to provide consumers with high quality products and services and competitive prices, and ensure the optimal functioning of the single market.

4.2.2. *Clarify the application of EU competition law to collective agreements on the working conditions of self-employed people*

The **second driver** refers to the fact that self-employed people are in principle considered undertakings in terms of competition rules, and therefore Article 101 applies to them, when they collectively negotiate to improve their working conditions (including their income). At the same

⁷¹ Article 3(3) of the Treaty on European Union.

time, the **third driver** of the problem is that there is no clarity at EU level on how collective agreements on the working conditions of self-employed people are assessed under EU competition law.

Therefore, in order to tackle these drivers, the initiative should clarify the instances and conditions under which certain solo self-employed people may negotiate and conclude collective agreements with their counterparties for the improvement of their working conditions without risking an infringement of Article 101 of the Treaty.

Intervention logic diagram

Problem / Driver	Objective
Problem There is legal uncertainty about the application of EU competition law to collective agreements on the working conditions of solo self-employed people who may have little influence over their working conditions	General objective Ensure that EU competition law does not stand in the way of collective negotiations and agreements about working conditions for solo self-employed people having little influence over their working conditions
Driver 1 Some solo self-employed people may have little influence over their working conditions	Specific objective 1 Identify those solo self-employed people having little influence over their working conditions who should not be hindered to negotiate and agree collectively their working conditions
Driver 2 Self-employed people are undertakings	Specific objective 2 Provide clarity as to the application of EU competition law on collective agreements regarding the working conditions of self-employed people
Driver 3 Lack of EU guidance as to the application of EU competition law on collective agreements of self-employed people	

4.3. Margin of discretion of the Commission for the achievement of objectives

Policy options, adequate to address the problem identified by this initiative, have to be developed within the limits of the Commission's procedural and substantive powers to achieve the objectives set out under section 4.2.

The Commission, as any other EU institution, shall act within the limits of the powers conferred by the Treaties (Article 13(2) TEU). It has to ensure, in line with Article 101 of the Treaty, that agreements between undertakings do not unduly harm competition and consumers. When applying or interpreting Article 101 of the Treaty, the Commission is also bound by the relevant case law of

the CJEU. However, the Commission can, in addition, set priorities in order to make more effective use of its limited resources and focus its efforts on deterring the most harmful practices. When setting priorities, the Commission does not interpret Articles 101 and 102 of the Treaty but only identifies instances, which may not merit the Commission's intervention. The Commission has a wide, but not unlimited margin of discretion to set priorities.⁷² Priority setting must be premised on criteria that do not go beyond what is proportionate and do not encompass behaviours that might raise serious concerns for competition and consumers.

In line with the above, the judgments in *Albany* and *FNV Kunsten*, mentioned under sections 2.1 and 2.2 of the Report, set the framework for interpreting the scope of application of Article 101 of the Treaty when it comes to collective agreements concerning the working conditions of self-employed people. These two judgments make clear that Article 101 of the Treaty shall not apply to collective bargaining agreements concerning the working conditions of “workers” and “false self-employed people” in light of the social policy objectives pursued by such agreements. Based on a teleological interpretation of these judgments, the Commission could consider as equally included under this “social policy exemption” also certain self-employed that are in a situation comparable, or very close, to that of workers. As the case law currently stands, collective agreements of self-employed people who cannot be seen as comparable to workers cannot be entirely excluded from the scope of Article 101 of the Treaty. However, insofar as proportionate, the Commission could exercise its priority-setting powers and commit in certain situations not to intervene against them.

Both in the case of exclusion from the scope of Article 101 of the Treaty and in the case of priority setting, Commission action needs to respect the proportionality safeguards deriving from the case law of the CJEU. That means that even though it is possible to cover also collective agreements of self-employed people that may not be comparable to workers with priority-setting, the Commission can do so only to the extent this is driven by the same social policy considerations and the commitment is of such a scope that it is not likely to harm consumers. Since self-employed people are undertakings according to the case law, any priority setting regarding their collective agreements would need to safeguard sufficient scope for the Commission to intervene in possibly harmful situations. Therefore, also under priority setting, it would not be possible to give a blank check to the collective agreements of all self-employed people. In order to respect these principles, the Commission would need to focus on those that similarly to workers, may be in an unbalanced negotiating position. This is likely the case for solo self-employed people who rely primarily on their own personal labour for the accomplishment of the services concerned (i.e. a characteristic shared also by workers and false self-employed people).⁷³ For the same reasons, this initiative could cover only collective negotiations and agreements between the self-employed people and their professional customers that by their nature and purpose relate to the working conditions of the former (i.e. not to the terms and conditions charged to consumers).

The Commission also has, to a certain extent, discretion as regards the policy instrument that can be used for this initiative. Under Article 103(2)(c) of the Treaty a Council Regulation can be adopted

⁷² See the Court's judgment in case C-119/97P *Ufex and Others v Commission*, paras 88-89; in case T-24/90 *Automec v Commission*; and in case C-449/98P *IECC v Commission*, paras 77 and 85.

⁷³ See section 2.1.

to define the scope of application of Article 101 of the Treaty excluding collective agreements of certain self-employed people from the application of Article 101 of the Treaty, in line with the Court's case law and depending on the agreement of the legislator. An alternative policy instrument is to issue Commission Guidelines, i.e. a Commission Communication conveying the Commission's interpretation for the application of EU competition rules on collective agreements of self-employed people. In case the Commission would consider appropriate to exercise its priority setting powers, which could also be done in the form of Guidelines.

5. WHAT ARE THE AVAILABLE POLICY OPTIONS?

5.1. What is the baseline from which options are assessed?

The baseline for the assessment of the impact of the policy options proposed below is the situation absent the current initiative, i.e. the “no policy change” scenario.

In the absence of EU intervention, the legal uncertainty as to the application of EU competition rules on collective agreements of self-employed people, the infringement risks and the associated chilling effect will remain.⁷⁴ Self-employed people having little influence over their working conditions will continue to be without certainty on whether they may negotiate their working conditions with their counterparties. Considering the estimated growth of the number of people working through platforms and the pervasiveness of self-employment in the offline economy,⁷⁵ it is likely that the problem will grow in scale.⁷⁶

The uncertainty and the chilling effect will remain in full for the offline economy. It will continue to discourage self-employed people (and their counterparties) to use certain rights provided under EU or national legislation. In particular, even if national measures explicitly grant certain self-employed people the right to bargain collectively, these people will be reluctant to exercise their rights in fear of infringing EU competition law. In addition, the chilling effect will further affect future legislative initiatives by national legislators to improve the working conditions of certain solo self-employed people by granting them collective bargaining rights. In the context of EU law, the Copyright Directive sets out the framework to ensure authors and performers receive fair remuneration when they license or transfer their exclusive rights for the exploitation of their works or other subject matter, *inter alia* through collective bargaining. However, the application of EU competition law to self-employed authors and performers may cause uncertainty (and ultimately have a dissuasive effect) for such possibility. Therefore, whilst aiming at improving the working conditions of certain self-employed people, the effectiveness of national measures, including in the

⁷⁴ See section 2.

⁷⁵ See section 2.4

⁷⁶ Furthermore, an uneven playing field may persist between companies that employ workers and companies that replace workers with self-employed in order to reduce costs. See also Commission Staff Working Document - Impact Assessment Report, accompanying the document Proposal for a Directive of the European Parliament and of the Council to improve the working conditions in platform work in the European Union, SWD(2021) 396 final/2, Brussels, 10.12.2021. page 9, quoting Eurostat data. Available [online](#).

context of the implementation of EU law (like in the case of the Copyright Directive) may potentially be reduced because of the chilling effect of EU competition law.

Platforms' business models are likely to flourish and expand in new sectors. Whilst this evolution may lead to the creation of new jobs and business opportunities, such positive developments are unlikely to reflect on the quality of working conditions of people working through platforms. In a scenario of no EU intervention, the number of self-employed people working through platforms who may have little influence over their working conditions is expected to increase, in parallel with the growth of the number of people working through platforms as an overall trend. For these people, the uncertainty and the chilling effect will also remain in full. However, the consequences of the lack of EU intervention may to some extent be mitigated by future developments in that field. In particular, once adopted and implemented the Platform Work Directive⁷⁷ may partly address this issue by bringing greater clarity on who should be considered as a worker (see section 1.2).⁷⁸ Around 5.5 million are estimated to be at risk of misclassification.⁷⁹ As set out above, the proposal for a Platform Work Directive aims to address the misclassification issue in the context of platform work, whilst the present initiative will cover a broader range of people providing their services to digital labour platforms, who may not be misclassified workers, but may nevertheless have little influence over their working conditions.⁸⁰

5.2. Description of the policy options

5.2.1. Options discarded at an early stage

The policy options should be initially assessed in light of: (i) their adequacy to address the overarching problem of the present initiative and (ii) the Commission's powers to materialize them. Options that from the outset cannot adequately address the problem or which cannot fit within the Commission's remit should be discarded at this stage.

⁷⁷ See in that sense, the European Commission. Commission proposals to improve the working conditions of people working through digital labour platforms. Press Release. 9 December 2022. Available [online](#).

⁷⁸ It is noted that some Member States are also adapting their labour laws in reaction to the growth in the number of people working through platforms. For example, both Spain and Greece have very recently adopted laws establishing the right to collective bargaining for people working through platforms, under certain conditions. (the Spanish Royal Decree-Law 9/2021, Available [online](#); Hellenic Republic, Law 4808/2021. Available [online](#) Additionally, a growing number of national court decisions in the context of reclassification cases (where self-employed people ask the court to recognize that they are false self-employed people and change their status to that of worker) are recognizing the existence of economic dependence or even of an employment relationship between service providers and digital platforms. For a review of these cases see European Centre of Expertise in the field of labour law, employment and labour market policies (ECE). "Case Law on the Classification of Platform Workers: Cross-European Comparative Analysis and Tentative Conclusions", May 2021. Available [online](#).

⁷⁹ See Commission Staff Working Document - Impact Assessment Report, accompanying the document Proposal for a Directive of the European Parliament and of the Council to improve the working conditions in platform work in the European Union, SWD(2021) 396 final/2, Brussels, 10.12.2021. page 9, quoting Eurostat data. Available [online](#).

⁸⁰ For an overview of the Platform Work Directive please see Annex 5 and section 1.2 of this report.

As noted in section 2, the problem that the present initiative aims to address is the legal uncertainty regarding collective agreements for the self-employed people having little influence over their working conditions in the online and the offline economy.

Additionally, section 4.3 of this report illustrates the margin of discretion of the Commission to address this problem and the underlying limitations stemming from the case law of the CJEU as to the collective agreements that can be excluded from the scope of Article 101 of the Treaty and for those that could be covered by the enforcement priorities of the Commission.

Against this background, the following potential policy options are discarded:

First, one option initially considered was to cover collective agreements by solo self-employed people providing their own labour only when they have digital labour platforms as their counterparty. However, this option presents the disadvantage of not covering solo self-employed people in the offline economy who cannot significantly influence their working conditions. As such, it cannot therefore adequately address the overarching problem, which is to address the legal uncertainty for all solo self-employed people, who may have little influence over their working conditions, irrespectively of whether they provide their services online or offline. The consultation of stakeholders also firmly confirmed that the problem goes beyond the platform economy.

Second, another option initially considered was to cover collective negotiations/agreements by all solo self-employed people providing their own labour through digital labour platforms or to professional customers of any size.

However, as noted, the Commission's power to exclude collective agreements from the scope of Article 101 of the Treaty or not to initiate enforcement actions against such agreements is not unlimited. Not all solo self-employed people can be seen as having difficulties to influence their working conditions. Eurofound has estimated that roughly half of the self-employed people without workers, who are not small traders and farmers, may have little influence over their working conditions.⁸¹ *A contrario*, this implies that a relatively large proportion of solo self-employed people may not need to have access to collective bargaining to improve their working conditions. Including them in the scope of this initiative would be disproportionate and risk leading to unjustified higher costs for businesses and consumers. Hence, the over-encompassing scope of that policy option would have gone beyond the Commission's margin of discretion to achieve these objectives.

Another possibility was to limit this option by excluding regulated (and liberal) professions, which are often perceived as being in a position to influence their working conditions. However, also this option would have been inadequate to address the problem. Although the term "regulated profession" is defined at EU level by a Directive, it lies upon the Member States to decide whether certain professions should be regulated or not and the list of the regulated professions therefore

⁸¹ Eurofound (2017), Exploring self-employment in the European Union, Chapter 1. Available [online](#).

differs from one Member State to another.⁸² In the same vein, there is no EU definition for “liberal professions”, which are generally understood to cover professions such as architects, lawyers, veterinaries or accountants.⁸³ Additionally, even if there would have been EU wide definitions of regulated and liberal professions, that limitation equally entails the risk of covering solo self-employed people who may not have difficulties in influencing their working conditions. Therefore, also this option would risk exceeding the objectives of the initiative and the Commission’s powers to achieve these objectives.

5.2.2. *The options assessed*

In light of the objectives of this initiative and the Commission’s margin of discretion to address these objectives, the following two policy options are impact assessed.

Option 1 covers collective negotiations/agreements by solo self-employed people who can be considered to lack bargaining power because they are not sufficiently independent from their counterparty and thus, are **in a position comparable to that of workers**. As noted under section 4.3, based on a teleological interpretation of existing case law of the Court of Justice, the Commission can consider agreements of people in a position comparable to that of workers excluded from the scope of Article 101 of the Treaty. On this basis, the collective agreements of the following groups of solo self-employed people can be covered by this option:

- *Economically dependent solo self-employed people who earn at least 50% of their total annual work-related income from a single counterparty:* These are solo self-employed people who do not determine independently their conduct on the market because they are largely income dependent on the undertaking to or through which they provide their services. The situation of such self-employed people has been recognized in a number of Member States, such as Spain⁸⁴ and Germany⁸⁵, where, based on certain conditions, the national legislator grants to these people the right to bargain collectively, in a similar way to workers.

⁸² See Article 3 of the Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications OJ L 255, 30.9.2005, p. 22–142. It is true that certain professions are regulated at EU level, for instance in the road transport sector under [Regulation](#) (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC OJ L 300, 14.11.2009, p. 51–71. However most of them are not regulated at EU level.

⁸³ Liberal professions are simply mentioned Directive 2005/36/EC as being a part of the broader concept of “regulated” profession. For some of them, such as lawyers, specific directives apply to their practice within the EU.

⁸⁴ See Article 11 of Law 20/2007, available [online](#), which defines an economically dependent worker (trabajador autónomo económicamente dependiente – TRADE) as a worker who depends economically on one main client, from which he/she obtains at least 75% of his/her income.

⁸⁵ See Section 12a of the Collective Agreements Act, available [online](#), which provides for the worker-like status (arbeitnehmerähnliche Personen) according to which, solo self-employed people are economically dependent when they depend on one main client from which they receive more than 50% of their income (33% if they provide artistic, literary or journalistic services).

- *Solo self-employed people working side-by-side with workers:* These are solo self-employed people who perform the same or similar tasks “side-by-side” with workers for the same counterparty. They provide their services under the direction of their counterparty and do not bear the commercial risks of the counterparty’s activity or enjoy independence as regards the performance of the economic activity concerned. Several Member States cover workers and self-employed people active in the same sectors.⁸⁶
- *Solo self-employed people working through digital labour platforms:* The emergence of the online platform economy and the provision of labour through digital labour platforms has created a new reality for certain solo self-employed people. Many of them can find themselves in a situation comparable to that of workers due to their dependence on digital platforms, especially in terms of their customer outreach. Digital labour platforms are usually able to unilaterally impose the terms and conditions of their relationship, without prior information or consultation of the solo self-employed people. The latter often face “take it or leave it” work offers, with little or no scope to negotiate their working conditions, including their remuneration. Additionally, the use by these platforms of automated systems to match supply and demand for work (“algorithmic management”) is inherent to their business model. Such systems, despite the efficiencies that they create, also have a significant impact on working conditions of people working through platforms and may conceal the existence of subordination and control by the digital labour platform on the persons performing the work.⁸⁷

Case law and legislative developments at national level, illustrate the comparability between solo self-employed people working through digital labour platforms and workers. In Member States and beyond, there have been more than 100 court decisions and 15 administrative decisions on cases of alleged misclassification in platform work.⁸⁸

Option 2: In addition to including solo self-employed people who are in a position comparable to that of workers as in Option 1, this second option also covers collective agreements of other solo

⁸⁶ See for instance, Authority for Consumers and Markets (Dutch Competition Authority) (2019) Guidelines on price arrangements between self-employed workers, available [online](#), exempting the application of national competition law for price arrangements of these “side-by-side” By way of illustration, Article 14 of the Collective Agreement in the Theatre and Dance sector in the Netherlands concluded between the Kunstenbond (Artist Union) and the Nederlandse Associatie voor Podiumkunsten (Dutch Association for Podium Arts) for the period 1 January 2020 – 31 December 2021. Available [online](#). Similarly, Article 2 of the Collective Agreement for professional journalists, concluded by the Gospodarska zbornica Slovenije (Chamber of Commerce and Industry of Slovenia), the Svet RTV Slovenija (Council of RTV Slovenia) and the Združenje radijskih postaj Slovenije ter (Slovenian Radio Station Association) and the Sindikat novinarjev Slovenije (the Trade Union of Slovenian Journalists). Available [online](#).

⁸⁷ See Platform Work Directive, Explanatory Memorandum, p.2.

⁸⁸ European Centre of Expertise in the field of labour law, employment and labour market policies (ECE). “Case Law on the Classification of Platform Workers: Cross-European Comparative Analysis and Tentative Conclusions”, May 2021. Available [online](#). Please note that this has also led to some change in the legislation of some Member States which have established a presumption of employment relationship or the right to collective bargaining for service providers to or through digital platforms See for instance Spain, with the Royal Decree-Law 9/2021, available [online](#), or Greece with the Hellenic Republic, Law 4808/2021 available [online](#).

self-employed in an imbalanced negotiating position by using the priority setting powers of the Commission. As explained under section 4.3, the Commission has in principle the power not only to exclude certain agreements from the scope of Article 101 of the Treaty, but also to commit, where the legal limits of exclusion are exceeded, not to intervene in cases where this is proportionate, in light of the objective they pursue and the harm they could cause.

Provided that certain safeguards are met, it may be proportionate for the Commission to commit not to intervene against solo self-employed people who face an imbalanced negotiating position even if they are not overall in a situation “comparable to that of workers” when they collectively negotiate to improve their working conditions. Therefore, in addition to the categories of solo self-employed people covered under Option 1, this second option covers collective agreements of solo self-employed people who are also facing an imbalance in their negotiating position. For the sake of clarity, this option provides examples of situations where solo self-employed people are facing such an imbalance. Namely, when they are:

- *dealing with counterparties of a certain economic strength.* Indeed, solo self-employed people who deal with counterparties that have a certain level of economic strength, and hence buyer power, may have insufficient bargaining power to influence their working conditions on their own. The Commission could commit not to intervene against collective agreements between solo self-employed people and their counterparties in at least in two instances:
 - where the annual aggregate turnover of the counterparties, individually or jointly, exceeds EUR 2 million⁸⁹ or their workforce headcount is equal or more than 10 workers: These thresholds are premised on the relevant Commission Recommendation on the notion of SME⁹⁰ and they cover all companies excluding the micro enterprises, as defined under the Commission Recommendation. These thresholds take stock of the fact that SMEs rely on solo self-employed people more than bigger enterprises. In particular, this option would take into account that 91% of solo self-employed people in EU are estimated to work for microenterprises and that an imbalance of negotiating power cannot be assumed from the outset in all cases and sectors when a microenterprise negotiates with self-employed people.
 - a. the counterparties represent the whole sector or industry. As mentioned above, some studies have highlighted the fact that in certain labour markets, some self-employed people may face the monopsony power of their counterparty/ies. That is to say, because of the lack of alternatives available for the solo self-employed people to sell their services, the counterparty/ies can dictate the price at which they would buy these services. They have also highlighted that collective bargaining could help

⁸⁹ If one microenterprise is part of a group of companies, the turnover to be considered is that of the whole group.

⁹⁰ Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises. Available [online](#). Article 2.3 of the Annex to the Recommendation defines microenterprises as “an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million”.

remedy the situation,⁹¹ which is particularly acute when the counterparty/ies cover(s) a whole sector. This monopsony situation has also been described by certain stakeholders' contributions.⁹²

- *entitled to collectively bargain under national or EU legislation:* As mentioned in section 2, situations of imbalanced negotiating positions have been subject to national or EU measures aiming to ensure that people in that situation have recourse to collective bargaining. Several of the people covered by these measures may be comparable to workers while others may not.⁹³ Therefore, this second option covers all self-employed people to which these national measures apply. National legislators are clearly well placed to assess the particularities of Member States' economies and the challenges self-employed people may face in negotiating their working conditions.
 - Similarly, the EU legislator has also acted in order to ensure fair remuneration for authors and performers for the exploitation of their works or other subject matter in the framework of the EU Copyright Directive, where collective bargaining is recognised as one of the available mechanisms that can be relied on for this purpose.⁹⁴ The Copyright Directive recognizes that “[a]uthors and performers tend to be in the weaker contractual position when they grant a licence or transfer their rights, including through their own companies, for the purposes of exploitation in return for remuneration, and those natural persons need the protection provided for by this Directive to be able to fully benefit from the rights harmonised under Union law”. Some of the people covered by the EU Copyright

⁹¹ See in that sense OECD (2019), *Negotiating Our Way Up: Collective Bargaining in a Changing World of Work*. Available [online](#). See section 2.1.1: “collective bargaining is also a key tool of market control, i.e. (...) limiting the monopsony power of firms which in some cases may profit from a lack of bargaining power of workers.”. and section 5.2.3 “A complementary policy option explored by some governments consists in lifting the prohibition to bargain collectively for some workers who are genuinely self-employed, but are nonetheless in situations of power asymmetry vis-à-vis their customer/employer. This is the case when self-employed workers are facing employers/clients with a disproportionate buyer or monopsony power, while their outside options are limited”.

⁹² See comments to the Inception Impact Assessment of the Information Technology and Innovation Foundation; p. 36 “unions can be instrumental in addressing monopsony power in a limited number of situations and improving the workers’ rights”. See ETUC reply to the Open Public Consultation “*Collective bargaining is key to address monopsony power. It is the most efficient tool to remedy such power imbalances in the labour market and raise labour standards for self-employed workers*”.

⁹³ For instance, in Ireland following the Competition (Amendment) Act 2017. available [online](#), voice-over actors, session musicians and freelance, journalists are excluded from the scope of the national equivalent to Article 101 of the Treaty. In Austria, the possibility for self-employed journalists and homeworkers to benefit from collective agreements is also foreseen by the Journalist Act 1920, available [online](#) and the Homeworkers Act 1960, available [online](#). In addition, although some may have similar criterion as under option 1, they may not fully overlap.

⁹⁴ Article 18(1) and Recital 72, Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, PE/51/2019/REV/1 OJ L 130, 17.5.2019, p. 92–125. See also Recital 73 of the same Directive, according to which the remuneration of authors and performers should be “appropriate and proportionate to the actual or potential economic value of the licensed or transferred rights, taking into account the author's or performer's contribution to the overall work or other subject matter and all other circumstances of the case, such as market practices or the actual exploitation of the work”.

Directive may be in a position comparable to workers, while some others will be in an imbalanced bargaining position. Therefore, this option extends to all solo self-employed people covered by the Copyright Directive.

As mentioned above, these are only examples of situations where an unbalanced position is likely to occur. However, this list is not exhaustive. Depending on the individual underlying circumstances, self-employed persons might face an imbalance in bargaining power, even if they do not fall into any of the previous examples. In line with its priority setting, the Commission would not intervene in such cases either.

6. WHAT ARE THE IMPACTS OF THE POLICY OPTIONS?

Both policy options aim at ensuring that EU competition law does not stand in the way of collective negotiations over pay and other working conditions by solo self-employed having little influence over their working conditions. Both options will increase legal certainty for solo self-employed that can be seen as comparable to workers. Option 2 may in addition re-assure other solo self-employed people that are in an imbalanced negotiating position. Therefore, both options will ultimately address – albeit to a different extent – the chilling effect for self-employed people and their counterparties falling within the scope of the chosen option. Publicly available guidance by the Commission on this issue may encourage the National Competition Authorities (“NCAs”) to take a common approach in relation to competition law and collective bargaining, especially since, under certain circumstances, they have to apply both EU and national competition law.⁹⁵ In addition, it may help Member State authorities and legislators to better understand the remit of EU competition law in relation to collective negotiations/agreements by solo self-employed people and incorporate it in their decision making process.

While the policy options differ with respect to the personal scope, i.e. with respect to which solo self-employed people would potentially be concerned, the categories of main impacts are the same across both options. The quantification of how many individuals would be concerned by those impacts under each options will be presented in Section 7.1.

6.1. Direct impacts

The **direct impact** of both policy options is to dissipate the legal uncertainty for solo self-employed people and their counterparties by increasing clarity about the application of EU competition rules to collective agreements on the working conditions of solo self-employed people. As set out in Section 2.1, many participants to the Open Public Consultation claimed that the reason why solo self-employed people cannot benefit from collective bargaining is uncertainty around the application of EU competition law.⁹⁶ Both options have in common that infringement risks in relation to such agreements would be reduced for the solo self-employed people and their

⁹⁵ See Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (now 101 and 102) OJ L .1, 4.1.2003, p. 1; Article 3(1).

⁹⁶ Among these, UNI Europa, ETUC, the Federation of Screenwriters in Europe, the International Federation of Actors. This is in line with views of academia, see section 2.1.

counterparties, as they would be able to rely on guidance at EU level. The increased legal certainty is in turn expected to support the effectiveness of national measures foreseeing collective bargaining for certain solo self-employed people. However, overall, the effect of increased legal certainty is as such not precisely quantifiable.⁹⁷

As neither of the options imposes any obligation, nor requires any action by stakeholders, a direct quantifiable economic impact is not expected. The increased legal certainty, which any of the two options will provide, could facilitate the conclusion of collective agreements by solo self-employed people, but does not in any way oblige the counterparties to enter into such collective agreements.⁹⁸ Therefore, any impacts derived from the conclusion of collective agreements facilitated by any of the options would only be indirectly attributable to them.

6.2. Indirect impacts

Both options would likely produce several **indirect impacts** that would be derived from actions by stakeholders (Member States, solo self-employed people or companies). To the extent that solo self-employed will take up collective bargaining and conclude collective agreements as a result of the legal certainty provided by the policy options, the main positive impacts are better pay and working conditions and, linked to that, less poverty for the solo self-employed people concerned. Correspondingly, this may imply higher costs for digital platforms and undertakings relying on services by these solo self-employed people, which may partially be passed on to consumers.

Further indirect economic impacts cannot be excluded, notably on (i) prices for consumers and households (due to the possible pass-on of costs); (ii) jobs and employment; (iii) SMEs; (iv) the competitiveness, productivity, and the internal market, as well as on (v) public budgets.⁹⁹

In addition, further indirect social impacts may also arise in terms of (i) social dialogue, and (ii) fundamental rights.¹⁰⁰ Indirect impacts on (iii) the environment appear unlikely.

The above categories of indirect impacts are expected to be the same across both options, although the magnitude of the impacts will vary with the scope of the option. Moreover, the categories of impacts, as well as the trade-offs involved, are not expected to be fundamentally different from

⁹⁷ See section 7.2 for an estimation of solo self-employed that will be covered by each option and therefore benefit from the legal certainty of this initiative.

⁹⁸ Though the legal certainty provided by the initiative could imply a reduction on legal costs by companies and solo self-employed, there is no information available on how much those costs would represent, and they would most likely be negligible.

⁹⁹ In the OPC, to the question “*In your view, will an initiative ensuring that EU competition law does not stand in the way of collective bargaining by solo self-employed lead to economic impacts?*” 192 (71.91%) respondents answered yes (145 indicated that the economic impacts would be positive or very positive; 13 indicated that the economic impacts would be negative or very negative); 21 (7.87%) answered no and 54 (20.22%) answered I do not know. See section 11 (Annex 2).

¹⁰⁰ In the OPC, to the question *In your view, will an initiative ensuring that EU competition law does not stand in the way of collective bargaining by self-employed lead to any impact on fundamental rights and freedoms?* 180 (67.42%) respondents answered yes (151 indicated that the impacts would be positive or very positive; 7 indicated that the impacts would be negative (no respondent said very negative); 52 (19.48%) answered no and 35 (13.11%) answered I do not know. See Section 11 (Annex 2).

those of collective agreements reached by workers with their employers via the social dialogue. The remainder of this Section will elaborate on the different categories of indirect impacts.

6.2.1. Better pay and working conditions for solo self-employed people concerned:

If the increase in legal certainty leads to more collective negotiations and agreements between the groups of solo self-employed people concerned and their counterparties, this is likely to result in better working conditions, especially in terms of remuneration. Better pay would increase the economic well-being of the solo self-employed people concerned and increase their purchasing power.¹⁰¹

As mentioned in the IA Support Study,¹⁰² the most common topics covered in collective agreements for “atypical workers” include securing regular employment, equal pay (as compared to workers), addressing the scheduling of hours, extending maternity protection, and ensuring the workplace is safe. By analogy, it can be expected that solo self-employed people entering collective agreements would focus on similar topics. Better pay is expected to be the main element of collective bargaining agreements by solo self-employed people.¹⁰³ Indeed, in the feedback received by stakeholders to the Inception Impact Assessment, around 190 (out of 309) replies expressly mentioned that rates would be the main element to be discussed in collective negotiations by solo self-employed people. Other topics such as better insurance protection (e.g. health or accident), pension rights, better working hours, access to training schemes are also expected to be topics that could be negotiated collectively and thus, improve the situation of the solo self-employed people concerned. In the context of platforms, issues related to the particularities of the online economy, such as the use of algorithmic management can also be subject to collective negotiations. Therefore, overall both options (albeit to a different magnitude) are expected to indirectly enable some parts of the workforce to improve their working conditions.

That said, there is very limited experience with collective agreements by solo self-employed people to date (which is consistent with the existence of a chilling effect absent policy intervention). Moreover, as the situation, including type of pay etc., of solo self-employed differs widely by profession and possibly country, it is not possible to provide a precise estimate of the effect of collective agreements on remuneration.

However, by way of example, in the (few) cases where collective agreements have been reached between service providers through digital platforms and their counterparties and which are

¹⁰¹ See Commission Staff Working Document Impact Assessment, Accompanying the document ‘Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union’, SWD(2020) 245 final, Brussels, 28.10.2020, p. 58. Available [online](#).

¹⁰² See IA Support Study, Section 3.2.3, step 1, Citing ILO (2020), Collective bargaining and non-standard forms of employment: Practices that reduce vulnerability and ensure work is decent, Labour Relations and Collective Bargaining issue brief no. 3. Available [online](#).

¹⁰³ Collective agreements typically improve pay, as also supported by the finding that workers having access to collective bargaining through trade union affiliation in Germany typically have higher pay than those without such access. See IA Support Study, Section 3.4.10. All of the citizens (solo self-employed) that submitted comments in the public consultation launched on 9 December 2021 submitted that the Guidelines would contribute to improving the remuneration of solo self-employed.

summarised in the table below, collective agreements have led, on average, to pay increases for these people of around 16%.

Table 1. Overview of collective agreements by service providers through digital platforms

	Platform	Before agreement		Collective agreement		% increase
		Payment basis	App. Per hour	Payment basis	App. Per hour	
AT	Foodora (deliveries)	Hour + delivery	7.2 ; 8.5	Month	8.7	2 - 20%
DK	Hilfr (cleaning)	Hour	16.9	Hour	18.4	9%
FR	Foodora (deliveries)	Hour + delivery	8.6	Month	8.7	1%
IT	Assodelivery (food deliveries) & UGL (trade union)	Delivery	7.4	Hour	10	35%
NL	Couriers collective agreement (deliveries)	Hour	11.7	Hour	15	28%
NL-2	Restaurant personnel platform (Temper)	Hour	12	Hour	13	8%
SE	Foodora (deliveries)	Hour + delivery	10.89	Hour	12.87	18%
Average			10.76		12.37	16%

Source: IA Support Study, Section 3.4.10, Table 33 based on internet sources.¹⁰⁴

For solo self-employed people not working through platforms, even fewer collective agreements could be identified (only for journalists in Austria and Germany and for architects in the Netherlands) with wide differences in outcomes.

However, taking the example of Germany, the figure of 15% also appears approximately in line with the difference in pay between workers who are members of trade unions and those who are not as collective agreements only apply to trade union members.¹⁰⁵

By analogy, collective agreements between solo self-employed people covered by the present initiative and their counterparties could result in an increase in the formers remuneration of up to 15% on average. Noticeably, that increase has tended to be higher (up to 40%) when the self-employed people concerned were initially earning very low equivalent hourly rates.¹⁰⁶

Increasing legal certainty could possibly lead to a higher coverage from collective agreements for the solo self-employed people concerned by the policy options and thus potentially increase remuneration and improve working conditions. This could mitigate the relatively poor pay or working conditions of certain solo self-employed people.

¹⁰⁴ The IA Support Study cites the following internet sources:
<https://orf.at/stories/3137503/>; <https://kontrast.at/foodora-betriebsrat-kollektivvertrag/>; https://www.researchgate.net/publication/340096676_The_Hilfr_agreement_Negotiating_the_platform_economy_in_Denmark; <https://www.cidj.com/metiers/coursier-coursiere>;
<https://www.youtube.com/watch?v=A8jYYcTYZFI>;
<https://secureservercdn.net/160.153.137.14/3be.191.myftpupload.com/wp-content/uploads/2020/10/CCNL-RIDER.pdf>; <https://strugglesinitaly.wordpress.com/2016/10/30/foodora-strikes-in-italy-the-dark-side-of-the-sharing-economy/>; <https://www.fnv.nl/nieuwsbericht/algemeen-nieuws/2021/04/hof-start-hoger-beroep-deliveroo-toepassen-cao>; <https://userfiles.mailswitch.nl/c/4f297fc54dc1a9c7ba8aa72a219467b7/1284-758506239266985e8e4957b36facd0c2.pdf>; <https://www.gigwatch.se/en/2019/09/21/foodora-2/>

¹⁰⁵ See IA Support Study, 3.4.10.

¹⁰⁶ See IA Support study section 3.4.10 referring to examples from journalists in Austria and food delivery platform workers in Italy; and a recent court decision relating to false self-employed temporary workers in baggage handling.

6.2.2. Decreased poverty

A significant number of self-employed (around 30% of all self-employed, according to the IA Support Study) are at risk of poverty.¹⁰⁷ When it comes to people working through platforms, 55% earn less than the net hourly minimum wage of their country.¹⁰⁸

The IA Support Study of the present initiative¹⁰⁹ estimates that a pay increase of 40% (which is in line with average observed increases in cases where the initial earnings were very low) may elevate around one third of these solo self-employed people with particularly low incomes out of poverty. In addition to the self-employed people concerned, on average also three additional household members would be lifted out of poverty at the same time. Collective agreements resulting from any of the options may therefore also have the positive indirect effect of reducing the risk of poverty for those household members.¹¹⁰

6.2.3. Correspondingly higher costs for undertakings relying on services by these solo self-employed

Due to the increased remuneration and improved working conditions for the solo self-employed people concerned, businesses relying on services by these solo self-employed people may face higher cost. The primary effect of collective bargaining would hence be of a redistributive nature.

However, the costs are unlikely to be borne by businesses alone. Just as with wage increases for workers, some of the costs are likely to be passed on to consumers, which would mitigate the effect on the businesses' profits (see Section 6.2.4.1).

Moreover, better pay and working conditions may also increase the productivity of solo self-employed people to the benefit of firms. Theories of “efficiency wages” suggest that increased pay can increase engagement and productivity of individual workers. Moreover, as noted in the Commission Impact Assessment on adequate minimum wages in the European Union:¹¹¹ “[e]vidence in specific countries suggests that minimum wage increases can indeed increase productivity in the low-paid sector”¹¹² and “[s]trong collective bargaining leads to better wage

¹⁰⁷ The IA Support Study estimates, based on EU-SILC data, that 30% of the solo self-employed are at risk of poverty, i.e., their equivalised household income is below 60% of the median equivalised household income. See IA Support Study section 3.5.3

¹⁰⁸ See Commission Staff Working Document - Impact Assessment Report, accompanying the document Proposal for a Directive of the European Parliament and of the Council to improve the working conditions in platform work in the European Union, SWD(2021) 396 final/2, Brussels, 10.12.2021. p.6, relying on Eurostat data. Available [online](#).

¹⁰⁹ See IA Support Study, section 3.5.3

¹¹⁰ See IA Support Study, section 3.5.3. The analysis is based on EU SILC data for solo self-employed not working through platforms and that are not farmers, shop or restaurant owners. Data on poverty for solo self-employed people working through platforms is not available.

¹¹¹ See Commission Staff Working Document Impact Assessment, Accompanying the document ‘Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union’, SWD(2020) 245 final, Brussels, 28.10.2020, p. 57. Available [online](#).

¹¹² Referring to Rizov, M, R Croucher and T Lange (2016), “The UK National Minimum Wage's Impact on Productivity,” British Journal of Management 27(4): 819–835).

*conditions, which may induce employees to work more productively and companies to adapt faster and more smoothly to changed market conditions, thus fostering productivity growth.”*¹¹³

Besides, it should be underlined that this initiative will not require any party to take a certain action (e.g. it is fully voluntary to engage or not in collective negotiations).

6.2.4. Further indirect economic impacts

In the context of the Open Public Consultation, EU citizens and stakeholders were asked if “*an initiative ensuring that EU competition law does not stand in the way of collective bargaining by solo self-employed [would] lead to economic impacts?*”. 192 respondents (71.91%) answered positively. Of those, 145 indicated that the economic impacts would be positive or very positive. Only 13 indicated that the economic impacts would be negative or very negative.¹¹⁴

Among the most positive effects, the respondents mentioned a general improvement in platform service providers’ reputation (45.69%); higher consumers’ trust in platform services providers (44.94%); better functioning of the single market and competition (43.07%); impact for national competition authorities (31.46%), and impact for national courts (21.35%).

6.2.4.1. Price increases for consumers and households

Consumers may bear part of the costs of the solo self-employed people’s increased remuneration, as it may be partially passed-on into consumer prices.

Pass-on of part of the increase in costs of hiring solo self-employed people into prices of the final product or service is likely, if the services provided by the solo self-employed affect the variable costs associated with the final product or service. This would be the case, for example, for an increase of the fees of riders for food delivery platforms. Conversely, when increased remuneration of solo self-employed people only affects the overhead costs of a business, pass-on into prices of the business’ product or service is economically unlikely.¹¹⁵

The degree of pass-on also depends on many other factors, including the structure of the market and whether one single company faces increased costs, or whether all companies in a sector face increased costs. When only one company is affected by the increase in labour cost, the magnitude of the pass-on is more likely to be limited than if all the companies in a sector face that increase. Therefore, pass-on is more likely to occur if the concluded collective agreement were to be extended to a whole sector. This would depend on the modalities of collective bargaining in each

¹¹³ Referring to Policardo L., Punzo, L. F. and Sanchez Carreras E. J., “Wage inequality and labor productivity in OECD countries”, 2018.

¹¹⁴ Those that answered that the effects would be negative or very negative are mainly employers’ associations and platform companies, like Delivery Hero SE, UNIZO, the Fédération Française du Bâtiment and Bolt. According to their replies, negative effects would be felt mainly in the form of higher product/services costs compared to non-EU countries and within the EU, and reduced competitiveness with regards to non-EU countries and within the EU.

¹¹⁵ An example of the scenario would be fees for solo self-employed cleaners for the cleaning of the business’ headquarters

Member States.¹¹⁶ The degree of pass on also depends on the degree of competition in the market and on the precise shape (in particular the curvature) of demand. It is therefore not possible to quantify the extent of pass-on precisely. Nevertheless, it can be expected that at least some of the increase in fees by solo self-employed will be reflected in higher prices to consumers and that the effect will be closer to industry wide rather than firm specific cost increases.

Based on a review of the empirical literature on cost pass-through prepared for the UK Office of Fair Trading,¹¹⁷ the IA Support Study assumes that, on average, 85% of the increase in cost for businesses will be passed on into higher prices for consumers.

This is likely a conservatively high estimate of the degree of pass-on, and hence on the effect on consumers, as it does not take account of the fact that costs of services of solo self-employed do not always represent a variable cost of the business.

6.2.4.2. Jobs/Employment

Both options are likely to lead to collective agreements, which would lead to levels of remuneration for the solo self-employed concerned that are closer to that of workers.

Higher remuneration for solo self-employed implies increased costs of the services provided by solo self-employed for businesses, which may reduce the demand for such services (or slower growth in the demand for such services). For example, costs of cleaning services by solo self-employed may increase overhead costs, prompting businesses to rely less on such services. Similarly, pass-on of increased costs into prices of final consumers (which seems likely, for example, for delivery or taxi services) may reduce consumer demand and hence the number of jobs for solo self-employed.

On the other hand, where low levels of remuneration are the result of an imbalance in bargaining power, redressing this imbalance may not have a significant impact on the jobs for solo self-employed. Moreover, where low levels of remuneration are the result of an employer exercising monopsony power, the setting of a minimum wage may even lead to increases in the demand for labour. In this respect, minimum wages, at levels observed in the EU, do not appear to significantly reduce employment and can even increase it in some cases.¹¹⁸ The possibility to improve working conditions through collective bargaining may also influence work incentives and attract more people to the labour market.¹¹⁹

¹¹⁶ See IA Support Study, section 3.5.2

¹¹⁷ Cost pass-through: theory, measurement, and potential policy implications, A Report prepared for the Office of Fair Trading RBB Economics, February 2014. Available [online](#).

¹¹⁸ See Commission Staff Working Document Impact Assessment, Accompanying the document ‘Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union’, SWD(2020) 245 final, Brussels, 28.10.2020, p. 46. Available [online](#)

¹¹⁹ See in that sense See Commission Staff Working Document Impact Assessment, Accompanying the document “Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union”, SWD(2020) 245 final, Brussels, 28.10.2020, p.47. (Impact on Work Incentives). Available [online](#)).

Moreover, the rapid growth of the number people working through platforms over the past decade appears to have been driven by new business models of digital platforms that are generally based on a flexible workforce mostly composed of solo self-employed. The flexibility of the workforce therefore seems to have been a key ingredient of that success. This flexibility is not affected by either option (at least not directly) which should mitigate any negative impact on the success of digital platforms.¹²⁰ The same consideration regarding flexibility also applies to other businesses relying on services by solo self-employed.

Furthermore, digital platforms and other businesses that would be counterparties to the collective agreements would also be entitled to bargain collectively, and all parties to the negotiations have an interest to limit the effect on jobs.

In addition, the policy options may contribute to the fight against false self-employment, as an increase in costs for hiring solo self-employed may make digital platforms or businesses more inclined to recruit workers – especially if there is little difference between the labour costs of a worker and of a solo self-employed. Collective agreements that lead to higher remuneration for solo self-employed might also result in job substitution.¹²¹ Indeed, some digital platforms already recruit workers instead of solo self-employed, be it voluntarily,¹²² by following a requalification of the contract by national courts,¹²³ or to comply with recently adopted legislations.¹²⁴

Overall, the impact of the present initiative on jobs for solo self-employed is likely limited and ambiguous; and any negative effects of the initiative are unlikely to go beyond what is necessary and proportionate to ensure fair remuneration and working conditions for the solo self-employed concerned.

6.2.4.3. Impact on SMEs

According to a recent study,¹²⁵ there may be more than 500 active digital platforms – a majority of which are on-location – mostly concentrated in larger Western Member States (DE, ES, FR, IT) and

¹²⁰ Nevertheless, some platforms have expressed concerns about the consequences of collective negotiation on prices or on the determination of the legal status of the solo self-employed people working through them, Delivery Hero Reply to the OPC (questions).

¹²¹ See IA Support Study, section 3.5.5.

¹²² Just Eat/Take Away has employment contracts at least in some countries. See <https://www.takeaway.com/be-fr/livreur> ; <https://www.just-eat.fr/livreur>.

¹²³ Spain's Supreme Court has ruled that riders working for Glovo (a digital food-delivery labour platform) are workers, Ruling of 25 September 2020, Glovoapp23 SL805/2020, STS 2924/2020, ES:TS:2020:2924 (see also footnote below. In France, the Cassation Court has ruled that the same was true for Uber's drivers, Ruling of 4 March 2020, Mr X v Uber France and Uber BV, No. 374 FP-P+B+R+I; Appeal No. S 19-13.316, FR:CCAS:2020:SO00374. In Belgium, in 2019, a Brussels court considered UberX drivers to be self-employed. Judgment of 16 January 2019, A/18/02920, Tribunal de l'entreprise francophone de Bruxelles.

¹²⁴ See Spanish Royal Decree-Law 9/2021, also known as the "Riders Act" Available [online](#), Hellenic Republic, Law 4808/2021 about platform workers in Greece. Available [online](#), or the system set up in Portugal by Law 45/2018 about the transport of passengers by platform workers. Available [online](#). See Annex 5 of the IA Support Study for further details.

¹²⁵ De Groen W., Kilhoffer Z., Westhoff L., Postica D. and Shamsfakhr F. (2021).

some Eastern Member States (CZ, PL, RO).¹²⁶ Approximately 361 (or between 70% and 92%) of them are SMEs,¹²⁷ against 155 larger enterprises. However, as all digital platforms tend to mostly rely on solo self-employed rather than on workers, digital platforms that are SMEs are unlikely to be disproportionately affected compared to larger digital platforms.

In the off-line economy, SMEs – while less dependent on solo self-employed than digital platforms – are relatively more reliant on services by solo self-employed (in terms of solo self-employed hired per worker) than larger businesses.¹²⁸ Indeed, the IA Support Study estimates that 91% of all solo self-employed not working through digital platforms are working for businesses with less than 10 workers, and 94% of solo self-employed not working through digital platforms are hired by businesses with less than 20 workers. SMEs therefore account for the vast majority of jobs for solo self-employed not working for digital platforms.¹²⁹ However, there is no data available that would allow reliably quantifying or estimating the (relative) impact of collective bargaining by solo self-employed on costs of SMEs. From the responses to the Open Public Consultation, it seems that the business side is generally concerned about a potential increase in the “labour cost” of hiring solo self-employed people, and that the problem may be more acute for SMEs.¹³⁰ In addition, representatives of SMEs question the need to distinguish between entrepreneurs i.e. between those who are solo self-employed and those who are running an SME.¹³¹

In principle, the proposed policy options apply horizontally to solo self-employed who fulfil certain criteria, indistinctively of the counterparties’ economic size. The case law of the CJEU, has never conditioned the application of the “social policy exemption” upon economic criteria relevant to the counterparty. Instead, the Court looked at the relationship between the counterparty and the person working, and assessed whether such relationship presents characteristics similar to the ones of an employment relationship. Therefore, option 1, covering only solo self-employed who are in a situation comparable to that of workers, applies to all SMEs, in line with the Court’s case law. Option 2, also covers solo self-employed providing their services to SMEs, save for the instances where the priority setting mechanism is triggered based on the economic strength of the counterparty. Only in that context, Option 2 provides an exception for micro-enterprises, since their

¹²⁶ PPMI (2021), Study to support the impact assessment of an EU initiative on improving working conditions in platform work. Section 2.1.1 . Available [online](#).

¹²⁷ PPMI (2021), Study to support the impact assessment of an EU initiative on improving working conditions in platform work. Section 2.1.1 See Annex 4 for an explanation of this range. Available [online](#).

¹²⁸ See IA Support Study, section, 3.4.4, Table 13. Based on 2008-2010 data for the Netherlands the number of solo self-employed hired per year increase far less than proportionately with the number of workers of the hiring business.

¹²⁹ See IA Support Study, section 3.4.4, Table 14.

¹³⁰ Business Europe welcomed the possibility for solo self-employed to collectively negotiate (with the exception of rates), but they think that SMEs should be excluded from the initiative and indicated that using the EU SME definition could be a useful approach.

¹³¹ SME United claimed that the options would impose “*unequal treatment between entrepreneurs within a sector who offer their services on the same market*” In the same line of argumentation, the French Confédération des Petites et Moyennes Entreprises explained that many SMEs are also in a situation of economic dependence vis-à-vis a limited number of distributors. The Confederation of Finnish Industries also mentioned that granting solo self-employed people the right to bargain collectively could alter the balance of negotiations with SMEs.

economic power, is not such to assume from the outset that they have in all cases a superior bargaining power vis-à-vis the solo self-employed service providers. Option 2 would use the concept of microenterprise because it is the smallest possible, clearly defined size at European level (see section 5.2.2). Even if it could be argued that a smaller or bigger size could be more adequate in order to foresee the potential imbalance between companies and solo self-employed, it was not possible, despite ample consultations with experts and stakeholders, to identify more adequate criteria. The limited quantitative data available relating to the situation of solo self-employed with respect to the size of their counterparties also use this category (see section 7).

Nevertheless, since these criteria simply reflect EU case law (in the case of the “comparable to workers” criterion) or other legislative initiatives (at national or EU level; and the Copyright Directive), the effect of not overall excluding SMEs from the present initiative cannot be regarded as disproportionate.

6.2.4.4. Competitiveness, productivity and internal market

At present, one of the reasons for businesses and digital platforms to rely on services by solo self-employed is the competitive advantage of relying on solo self-employed that provide services under poor pay/working conditions. While this imbalance represents a competitive advantage for firms relying on such solo self-employed, it is a competitive disadvantage for firms relying on an employment model. Both options would, to some extent, redress this imbalance between businesses relying on solo self-employed and those relying on employment. At the same time, the two policy options would preserve other advantages and disadvantages that each model brings (such as, for example, the greater flexibility under a solo self-employed model). In this sense, the policy options would contribute to levelling the playing field in terms of competitiveness between the different models.

Moreover, as explained in Section 6.2.3, better pay and working conditions for solo self-employed not only represent a cost for businesses, but may also increase the productivity of solo self-employed, which would benefit firms and foster productivity growth overall.

Regarding international competitiveness, the increase in “labour” cost for solo self-employed in the EU could lead to certain activities becoming more attractive outside the EU. This might particularly be the case for some services offered by solo self-employed people through digital platforms or activities that can be fully carried out online and thus does not depend on a physical presence within the EU for the activities to be carried out. In this respect, however, the trade-off is similar to that regarding relocation of work by workers to countries outside the EU. Moreover, for types of services where such relocation is possible, it is likely that the provision of such services is already significantly cheaper in some countries outside the EU than within the EU. As such, the additional impact of any of the options on international competitiveness of EU labour markets is likely to be limited.

Services by solo self-employed that are provided locally (including, for example, cleaning or delivery services) may see their (local) competitiveness affected to some extent. However, beyond the likely limited effects discussed above, no appreciable effects on the internal market and

competitiveness overall are to be expected. In any event, any impact on competitiveness will also be partially offset by increased productivity.

Finally, the increased clarity regarding the application of EU competition law on collective agreements by solo self-employed which any of the options will provide will likely have a positive effect on the internal market as it will provide more certainty to solo self-employed and businesses and in turn, may facilitate the provision of services across borders.

6.2.4.5. Public Budgets

The increased pay of solo self-employed working for professional customers may have a positive effect on the Members States budgets. The most pertinent impacts are likely savings in expenditure on minimum income support and on in-work benefits and increased tax revenues.¹³²

6.2.4.6. Possible other limited economic impacts

Neither of the two options is expected to lead to other significant economic impacts. Nevertheless further non-significant indirect impacts cannot be excluded. In particular:

- Regulatory charges, compliance costs, administrative costs, and enforcement costs:

The clarification that EU competition law will not stand in the way of collective agreements by well-defined groups of solo self-employed will not lead to significant costs by public administration. If anything, clarity on when competition law enforcement may not be triggered is likely to eliminate costs. Administrative costs associated with collective bargaining for businesses and solo self-employed are also likely to be limited: many businesses with workers will, where relevant, already be members of the relevant business associations. As for solo self-employed, who stand to gain from collective bargaining, cost of participation in bodies involved in such negotiations are likely to be substantially outweighed by increased pay. In any event, the present initiative only aims at removing the legal uncertainty that EU competition law may have on collective negotiations/agreements by solo self-employed people or provide comfort that they will not face an intervention on the basis of Article 101 of the Treaty. It does not oblige solo self-employed people nor their counterparties to enter into collective negotiations and agreements.

- Macro-economic environment:

Any of the two options are likely to only have a very limited impact on the other elements of the EU macro-economic environment, such as economic growth or the general conditions relating to investment. First, no obligations are introduced for businesses that could in turn lead to impediments for growth. Second, the solo self-employed people that would fall within the scope of any of the options account only for a fraction of the workforce – and the expected increase in pay

¹³² See IA Support Study, section 3.5.4; See Commission Staff Working Document Impact Assessment, Accompanying the document ‘Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union’, SWD(2020) 245 final, Brussels, 28.10.2020, p. 60-61. Available [online](#).

for the group of solo self-employed people that will likely be affected are estimated to amount to only a fraction of one percent at the EU level under any of the options.¹³³ Even absent any positive effects discussed above (on public budgets and on productivity, increased purchasing power and consumption of solo self-employed, and participation in the labour market by solo self-employed people) it is unlikely that there would be appreciable negative effects of any of the options on the wider macro-economic environment.

6.2.5. Further indirect social impacts

Beyond the key issues of better pay and working conditions set out in Section 6.2.1, either option is likely to have further indirect social impacts of a certain importance. The wider the personal scope of the initiative, the more important are also the expected social impacts.

In the context of the Open Public Consultation, the Commission asked EU citizens and stakeholder if an initiative ensuring that EU competition law does not stand in the way of collective bargaining by solo self-employed people will lead to social impacts. 229 respondents (85.77%) answered positively. 173 of them indicated that the economic impacts would be positive or very positive, and 14 indicated that the economic impacts would be negative or very negative.¹³⁴

Among the most positive effects mentioned by the respondents, were improved working conditions for solo self-employed people (77.53%); increased level of payments for solo self-employed (70.41%); better social protection for solo self-employed people (67.04%); higher quality jobs for solo self-employed (52.43%), and reduction of false self-employed people (52.06%).

6.2.5.1. Social dialogue

Both options may have an indirect impact on how Member States shape social dialogue in the future. In particular, it cannot be excluded that by gaining certainty about the application of EU competition law on collective agreements for the working conditions of solo self-employed, Member States which currently do not foresee collective bargaining for self-employed¹³⁵ may decide in the future that social dialogue and collective bargaining would, on top of workers, cover certain solo self-employed.¹³⁶

¹³³ See IA Support Study, section 3.5.1. Even assuming all platform workers and all solo self-employed would benefit from a 15% increase in pay that increase would amount to around 35 billion Euros in 2030 which is less than 0.26% of the EU GDP in 2020.

¹³⁴ Those that answered that the effects would be negative or very negative are mainly employers' associations and platform companies, like Delivery Hero SE, UNIZO, the Fédération Française du Bâtiment and Bolt. According to them, negative effects would be felt mainly in the form of more difficult access to the labour market for solo self-employed.

¹³⁵ Namely, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, Hungary, Latvia, Lithuania, Luxembourg, Malta, Romania, Slovakia See IA Support Study, Annex 5, cluster 2 for more details.

¹³⁶ For instance, France has recently put in place a new framework for social dialogue for self-employed working through certain platform according to which they can designate representatives. It has also created a dedicated authority tasked with regulating relations between platforms and platform workers. See <https://www.vie-publique.fr/loi/279617-ordonnance-21-avril-2021-representation-travailleurs-plateformes> as well as IA Support Study, Annex 5.

6.2.5.2. Fundamental rights

According to Article 51(1) of the Charter of Fundamental Rights of the European Union, the Charter applies to Member States only when they are implementing European Union law. Moreover, according to Article 6(1) of the Treaty of the European Union “[t]he provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.”

In the present case, there are no direct effects on fundamental rights, as the initiative aims merely to clarify the application of Union law, but indirect effects may include a positive impact on e.g. the right of collective bargaining (Article 28 of the Charter).

In the context of the Open Public Consultation, the Commission asked EU citizens and stakeholders if an initiative ensuring that EU competition law does not stand in the way of collective bargaining by self-employed people would lead to any impact on fundamental rights and freedoms. 180 respondents (67.42%) answered positively. 151 of them indicated that the impacts would be positive or very positive, and 7 indicated that the impacts would be negative or very negative.¹³⁷

Among the most positive effects mentioned by the respondents, were fair and decent working conditions (62.55%); reinforced right to bargain collectively (59.18%); reinforced freedom of association (54.68%); reinforced freedom to choose an occupation and right to engage in work (44.94%) and reinforced freedom to provide services (42.32%).

6.2.5.3.Environment

None of the options is expected to lead to appreciable (indirect) environmental effects.¹³⁸

7. HOW DO THE OPTIONS COMPARE?

The policy options assessed differ with respect to the groups of solo self-employed people covered, mirroring different degrees of bargaining power vis-à-vis their counterparties. Option 1 covers self-employed people in a position comparable to that of workers. For these self-employed people, due to the nature of their position, the imbalance in bargaining power is manifest, in the same way as for workers. Option 2 is broader in scope than Option 1 as in addition to the solo self-employed people who are in a situation comparable to that of workers, it covers those who may be considered to be in an imbalanced negotiating position on the basis of the size of their counterparty or on the basis of the assessments made by the national or EU legislator.

The effectiveness of each option depends on its ability to: i) provide legal certainty about the application of EU competition law; and ii) preserve the coherence and effectiveness of EU and national measures. As described in Section 5.1, under the baseline, the legal uncertainty and chilling effect would largely remain for all self-employed people having little influence over their working conditions. Therefore, any of the two options would be more effective than the baseline.

¹³⁷ Those that answered that the effects would be negative or very negative are three citizens submitting anonymous answers, and the Fédération Française du Batiment, the Wirtschaftskammer Österreich and the Arbeitgeberverband der Versicherungsunternehmen in Deutschland. According to them, negative effects would be felt mainly in the form of reduced freedom to conduct business or to provide services.

¹³⁸ Also participants to the OPC did not identify specifically what could be an environmental impact.

Both options aim to provide clarifications about the application of EU competition law on collective agreements. However, whilst option 1 and option 2 provide legal certainty for solo self-employed people in “a situation comparable to that of workers” through the Commission’s interpretation of the case-law on Article 101 of the Treaty, only option 2 provides additional comfort, through a priority setting mechanism, to solo self-employed people who are not necessarily in “a situation comparable to that of workers”, but who would still benefit from access to collective agreements. At the same time, that priority setting mechanism may be seen as less efficient than an exclusion from the scope of Article 101 of the Treaty through a purpose driven interpretation of the case-law, given that the priority setting only binds the Commission.¹³⁹

Concerning the coherence of the options, as explained in Section 1.1, the present initiative is in line with EU Parliament’s and Council recommendations to ensure adequate social protection for citizens and enhance collective bargaining. Furthermore, as explained in Section 5.2, both options would be seen as complementary to the proposal for a Platform Work Directive, since both of them include self-employed people working through digital platforms in their scope.

In Section 2.4, this report raises a coherence issue relating to the effective application of the EU Copyright Directive. This issue is only addressed by option 2 which explicitly covers solo self-employed authors and performers .

¹³⁹ Nevertheless, the priority setting could be expected to influence the priority setting of national competition authorities.

7.1. Comparison of the number of solo self-employed people covered under each option and of the quantifiable indirect benefits and costs

The following table reports the estimated number of “potentially affected” solo self-employed under each policy option in 2021 and 2030 (in millions of full-time equivalent workers). “Potentially affected” are all solo self-employed people falling within the scope of the respective option. The estimates in the table build on estimates in the IA Support Study for the set of policy options initially considered. These estimates have been adjusted to reflect differences in the personal scope between the options originally considered and the two options assessed in this report. As in the IA Support Study, all estimates are based on combining available data and estimates from different data sources coupled with additional assumptions, where necessary. The estimated number of people working through digital platforms corresponds to the estimates in the IA Support Study which are in turn based on PPMI survey data for 2021 combined with COLLEM data for 2017 and 2018 to derive projections for 2030. The estimates of the number of solo self-employed in the offline economy in 2021 in the different categories are primarily based on data from the Eurostat Labour Force Survey and research conducted in the IA Support Study. Corresponding estimates for 2030 are based on linear projections. See Annex 4 and the footnotes on Table 2 for more detail.

The projections for solo self-employed working through digital platforms in 2030 assume that the Commission proposal for a Platform Work Directive will be implemented by then and that, therefore, certain solo self-employed working through digital platforms will have been reclassified as workers and no longer fall within the scope of the present initiative.

Table 2. Estimated number of solo self-employed people potentially affected in 2021 and 2030 by policy option (in millions of full time equivalent workers)

	Solo self-employed people covered by the exclusion from Art 101(1)		Total option 1	Additional self-employed people covered under (negative) enforcement priorities			Total option 2
Year	People working through digital platforms	Economically dependent solo SE's in the offline economy ¹⁴⁰		Solo SE's in the offline economy working for non-micro-enterprises ¹⁴¹	Solo SE's in the offline economy covered by MS exemption ¹⁴²	SE in the offline economy likely covered by the Copyright Directive ¹⁴³	(adjusted for overlaps)¹⁴⁴
2021	14.1	4.7	18.8	1.1	3.8	0.8	20.8
2030	17.4	5.1	22.5	1.2	4.1	0.9	24.6

Source: Computed based on data from Eurostat and IA Support Study. See Annex 4.

Not all self-employed people that would be “potentially affected” (i.e. covered) by the policy options are likely to conclude or be covered by collective agreements and see an actual change in their working conditions. The IA Support Study therefore also proposed adjustments to reflect the following:

- (i) Some (groups of) solo self-employed people may not engage in collective bargaining despite the increase in legal certainty. This is estimated by the percentage of workers covered by collective agreements for workers per Member State.
- (ii) Even where collective agreements may be reached, some solo self-employed people would in any event achieve a remuneration above the level specified in the collective agreement and would hence not be interested in/affected by the collective agreement.

¹⁴⁰ Economically dependent solo SE's are estimated by the number of solo SE's that derive 75% or more of their income from one single client in the Eurostat LFS data. No data is available to the number of solo self-employed in the offline sector that are working “side-by-side” with workers. This implies that the total of self-employed people falling under option 1 may be underestimated. However, this underestimation may not be very serious if the group of side-by-side people largely overlaps with the group of economically dependent solo self-employed people in the offline sector.

¹⁴¹ Approximated by the estimated number of solo self-employed in the IA Support Study working for firms with 10 or more members in their staff. The estimate is based on Eurostat LFS data, Eurostat data on the size distribution of businesses and data on the reliance on self-employed by businesses of different sizes in the Netherlands .

¹⁴² Based on country-by-country research and estimates in the IA Support Study.

¹⁴³ Approximated by Eurostat LFS data on all self-employed (not just solo self-employed) creative and performing artists, authors, journalists in the cultural sector.

¹⁴⁴ The categories of solo self-employed people in the offline economy to which negative enforcement priorities of option 2 would apply overlap to some extent with one another and with the category of economically dependent self-employed people in the offline economy. The estimated total of self-employed people covered by option 2 takes account of this overlap.

The percentage of solo self-employed people that may opt out of a collective agreement is estimated based on survey data.

The table below reports the effect of these adjustments for the years 2021 and 2030 following the estimation in the IA Support Study. Columns 4 and 7 reflect the cumulative effect of applying adjustments (i) and (ii).¹⁴⁵

*Table 2. Estimated number of solo self-employed people in 2021 and 2030 affected by each policy option after adjustments (in millions of full-time equivalent workers).*¹⁴⁶

Year	Option 1			Option 2		
	Potentially affected	Adjustment for national worker coverage of collective agreements	Adjustment proxying in addition for opt-out	Potentially affected	Adjustment for national worker coverage of collective agreements	Adjustment proxying in addition for opt-out
2021	18.8	11.0	6.0	20.8	12.1	6.5
2030	22.5	13.3	7.2	24.6	14.4	7.8

Source: Computed based on data from Eurostat LFS and IA Support Study. See Annex 4.

The differences between options 1 and 2 in terms of the number of individuals that will likely benefit from collective bargaining agreements (see the estimate of potentially affected individuals after adjustments for the likely uptake and opt-out) translate into corresponding differences in indirect benefits and costs between the two options.¹⁴⁷

In terms of indirect benefits, an expected average pay increase of around 15% for affected individuals would amount to an estimated aggregate indirect benefit in terms of increased pay of approximately EUR 23 billion under option 1 and EUR 25 billion under option 2 in 2030. The estimated pay increases will have the further indirect benefit of lifting approximately 2.8 million individuals (solo self-employed and their family members) out of poverty under option 1, and 3.2 million individuals under option 2 by 2030. A further possible indirect benefit may be savings in State income support which may be of the order of EUR 1 billion.

The flipside of the expected increase in aggregate pay is that it may also result in indirect costs for businesses and consumers. Assuming for simplicity, that the entire aggregate pay increase will be borne by either firms or consumers and using a conservatively high average pass-on rate to consumers of 85%¹⁴⁸, firms may see cost increases on the order EUR 3.4 billion under option 1 and

¹⁴⁵ As adjustment (i) may to some extent already reflect opt-out, applying both adjustments jointly likely results in a lower bound estimate for the number of solo self-employed people affected under each option.

¹⁴⁶ These figures on self-employed people potentially or actually affected are rough estimates based on the available data combined with reasonable assumptions where necessary. Nevertheless, due to data limitations and inevitable difficulties making projections, the figures are subject to significant uncertainty.

¹⁴⁷ See also Annex 3 at Section 12 below.

¹⁴⁸ See Section 6.2.4.1.

EUR 3.7 billion under option 2, while consumers would face increased costs on the order of EUR 19 billion under option 1 and EUR 21 billion under option 2.

Quantification and estimation of indirect benefits and costs is subject to significant uncertainty and not all categories of indirect benefits and costs can be quantified.

7.2. Comparison of the policy options from a qualitative perspective

Option 1 covers instances of solo self-employed people active in the online and the offline economy who from the outset can be considered to be in a “situation comparable to that of workers”. On that basis, these solo self-employed people should not be deprived of the possibility to bargain collectively. As noted under Section 5, indications of strong income-dependence, the existence of a subordination relationship and the integration in a single economic unit constitute solid criteria of comparability to workers. Similar criteria are deployed by national legislation, soft law guidance and courts’ case law in the context of reclassification cases or where the national legislator assimilates self-employed people with workers by granting them the right to bargain collectively. This is the case particularly for people working through digital platforms. However, whilst removing the legal uncertainty about the application of EU competition law for solo self-employed people who fall within one of the three categories where they are in “comparable situation to that of workers”, option 1, has the disadvantage of not covering solo self-employed people who are in an imbalanced negotiating position vis-à-vis their counterparties and who also have little influence over their working conditions.

Indeed, in the offline economy, many self-employed people may still be unable to influence their working conditions even if they are not in a situation of economic dependence or working “side-by-side” with workers. This is particularly true in instances where the self-employed people offer their services to counterparties of a certain economic strength. The latter can transpose their economic power into significant bargaining power, limiting the ability of the self-employed people to negotiate better working conditions. Additionally, national measures may provide to self-employed people the right to bargain collectively or may exclude their agreements from national competition law. Such measures, in light of the primacy of the Treaty provisions against national legislation, would remain without effect, to the extent that the self-employed people covered are not in a “situation comparable to that of workers”. Moreover, the coherence issue with respect to the application of the Copyright Directive, would still remain, and therefore solo self-employed authors and performers might not be able to rely on certain mechanisms for the implementation of the provisions of this Directive in order to ensure a fair remuneration for the exploitation of their works protected by copyright or other related rights. This means that a significant number of authors and performers might ultimately not enjoy the benefits of the Copyright Directive provisions, taking into account that close to one half of creative or performing artists, authors, journalists and linguists in the EU-28 was self-employed people in 2018, compared to an average of 14 % for the whole economy.¹⁴⁹

¹⁴⁹ Eurostat Culture Statistics, 2019 Edition, Figure 3.9, p.73. Available [online](#).

By contrast, option 2 has the advantage of filling in the gaps that Option 1 may leave, by establishing a more effective formula for achieving the initiative’s objectives. On that assumption and within the Commission’s margin of discretion, option 2 expands the scope of option 1 and covers certain solo self-employed people who should already be entitled to bargain collectively because their imbalanced negotiating position has been taken into account by the Copyright Directive or national measures. Option 2 would thus provide the re-assurance that the Commission would not act against collective agreements concluded based on the implementation of the Copyright Directive¹⁵⁰ or national measures that go beyond covering self-employed people in a “situation comparable to that of workers”.¹⁵¹ Option 2 would also provide the same reassurance when the imbalance in bargaining positions of the solo self-employed people stems from the economic strength of their counterparty/ies. For instance, because their counterparty/ies cover a whole sector or because their annual aggregate turnover exceeds EUR 2 million or their workforce headcount is more than 10 workers.¹⁵²

Overall, in terms of expected benefits, Option 2 would thus lead to a larger population being able to improve their working conditions through collective negotiations.¹⁵³ This means that Option 2 will provide legal certainty to a wider number of self-employed. Additionally, due to the wider scope of this option, a greater number of solo self-employed people would indirectly be enabled to increase their salaries and ameliorate their working conditions. In terms of expected costs, the impact on SMEs is not considered to be substantially different between the two options¹⁵⁴, but it is likely that it is somewhat greater under Option 2, as this option covers a greater number of solo self-employed and may thus, indirectly trigger a greater number of collective agreements. It is noted though that in order to keep the impact proportionate, Option 2 excludes microenterprises from the scope of the initiative, where the sole criterion for the imbalanced negotiating position of the self-employed is the economic strength of the counterparty.

¹⁵⁰ In their joint submission to the public consultation launched in December 2021 the ECSA (European Composer and Songwriter Alliance); FERA (Federation of European Screen Directors) and FSE (Federation of Screenwriters in Europe) indicated that “*the inclusion in the draft Guidelines [...] of a commitment not to act against collective agreements negotiated in the context of the implementation of the Copyright Directive is the logical continuation of a policy of trying to address the issue of authors’ remuneration by facilitating collective action, removing an apparent contradiction between the policy goals of the Copyright Directive and the practise of occasionally challenging collective agreements by authors and performers on the basis of Article 101*”.

¹⁵¹ This could also provide guidance to National Competition Authorities, as they also apply Article 101 of the Treaty in parallel with their national legislation as provided under Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (now 101 and 102) OJ L 1, 4.1.2003, p. 1.

¹⁵² These thresholds are premised on the relevant Commission Recommendation on the notion of SME, Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized. Available [online](#). Article 2.3 of the Annex to the Recommendation defines microenterprises as “*an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million*”.

¹⁵³ As noted under section 7.1, option 1 will cover around 19 million self-employed people in 2021 and around 23 million in 2030, while option 2 will cover around 21 million self-employed people in 2021 and around 25 million self-employed people by 2030.

¹⁵⁴ See section 2.4.

7.3. Comparison between instruments

Two main instruments could be used to achieve the aims of the present initiative: (i) a Council Regulation or (ii) Commission Guidelines. While creating direct and binding legal effects, a Council Regulation may not be a sufficiently flexible tool for addressing the different situations solo self-employed people may find themselves in. By contrast, the Commission Guidelines are typically a better tool for providing detailed guidance and illustrative examples in a manner more accessible to self-employed people with possibly no access to legal advice. Additionally, the adoption of a Council Regulation is a lengthier legislative process as compared to the adoption of Commission Guidelines and can therefore not provide as quickly a solution for the solo self-employed people concerned. Taking these points into consideration, the adoption of Guidelines is the best way to achieve the aim of this initiative, i.e. to improve legal certainty for the solo self-employed people, in an effective and efficient manner.¹⁵⁵ This is also in line with the views of the majority of social partners (trade unions and employers' representatives).

8. PREFERRED OPTION

8.1. The preferred policy option

The comparison between the two options reveals that option 2 is the most adequate option in terms of effectiveness and coherence with EU law. The preferred option covers solo self-employed people both in the online and offline economy. It relies on a purpose driven interpretation of existing case law of the CJEU which excludes from the scope of Article 101 of the Treaty collective agreements in light of the social objectives they pursue. In addition, it sets the Commission's negative enforcement priorities in order to cover situations where the solo self-employed people are in an imbalanced negotiating position even if they may not be comparable to workers (covering among others self-employed people falling under the Copyright Directive and safeguarding its effectiveness).

8.2. Impacts of the preferred policy option

The preferred option would have the direct impact of addressing the legal uncertainty about the application of EU competition law to collective agreements on the working conditions of certain solo self-employed people, who may have little influence over their working conditions, also when these are not in "a situation comparable to that of workers" (see section 6.1). On the assumption of a future adoption and implementation of the Platform Work Directive, an estimated 24.6 million solo self-employed people would fall under the scope of the preferred option in 2030 and thus would benefit from legal certainty as far as they would not be hindered by competition law to have collective agreements for their working conditions.

¹⁵⁵ Even if the [review of the Horizontal Block Exemption Regulations](#) and their accompanying Guidelines was being conducted in parallel, this was not an adequate instrument for addressing the problem targeted by the present initiative. This initiative focuses on a specific competition law concern linked to labour markets. It is intended to be understood and applied by individuals that possibly lack technical knowledge or expert legal advice.

Uptake of collective agreements covering solo self-employed fostered by this preferred option may have several indirect impacts (see section 6.2). The main one is that the solo self-employed people concerned could enjoy better working conditions, especially in terms of remuneration. This could in turn also improve the living conditions of their families (see section 6.2.1 and section 6.2.2). Better remuneration could translate into higher costs for companies hiring solo self-employed people (see section 6.2.3). That cost could however be absorbed by an increase in productivity and/or partially passed on to consumers. The degree of “pass-on” to the consumers will however depend on many factors such as the structure of the market, competition therein or the modalities of collective bargaining at Member State level (see section 6.2.4.1). However, the indirect impact of higher cost is likely to be more relevant for SMEs, as they are more reliant on the services of solo self-employed people than larger firms (see section 6.2.4.3). That said, the impact on SMEs is not considered to be disproportionate (see sections 6.2.4.3 and 7.2). In terms of employment, it should be reminded that the preferred option will only concern a fraction of the EU workforce. In addition, minimum wage at levels observed in the EU, do not seem to significantly reduce employment (see section 6.2.4.2). Other indirect economic impacts in relation to competitiveness/productivity (see section 6.2.4.4), public budget (see section 6.2.4.5) as well as regulatory charges, compliance costs, administrative costs, and enforcement costs (see section 6.2.4.6) cannot be excluded, but are likely to be (very) limited.

Finally, the preferred policy option is likely to have important indirect social impacts in terms of how Member States will shape social dialogue in the future (see section 6.2.5.1) and how solo self-employed people may better enjoy the right to bargain collectively and their freedom of association (see section 6.2.5.2).

8.3. Application of the “one in, one out” approach

Under the “one in one out” approach new burdens resulting from a Commission’s initiative should be offset by reducing existing burdens in the same policy area. However, as mentioned in section 6.2.4.6, this initiative is more likely to reduce burdens and costs than creating new ones. Increasing clarity on the application of competition law is likely to reduce the regulatory burden perceived by self-employed people and their counterparties for engaging in collective negotiations and agreements on working conditions. Moreover, this initiative does not require any party to take a certain action (e.g. it is fully voluntary to engage or not in collective negotiations). From the perspective of the two negotiating sides in collective negotiations, namely businesses and the solo self-employed people, the present initiative will not impose any additional costs or burdens, since it does not interfere with the channels of conducting such collective negotiations. Enforcement costs by national competition authorities with regard to proceedings for collective agreements of self-employed people on their working conditions are also more likely to be reduced. Therefore, the Commission considers that there are no new burdens to offset with regard to this initiative.

9. HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?

The Commission will monitor the application of this initiative (i.e. the future Guidelines) by NCAs and national courts through reliance on the legal mechanisms set out in Regulation 1/2003. In this framework NCAs inform the Commission about their envisaged decisions and consult the Commission on any case involving the application of Article 101 and Article 102 TFEU.¹⁵⁶ National courts may also seek the Commission's opinion on questions concerning the application EU competition rules.¹⁵⁷

In this vein, the Commission will collect information about to what extent NCAs align their enforcement and priority setting practices with this initiative. The Commission has already at its disposal tools which aggregate data on formal consultations with NCAs and from which relevant information concerning this initiative can be easily extracted and analysed.

The Commission also intends to organise dedicated meetings with the European social partners (at least one after 5 years of implementation and a second one after 8 years of implementation) in order to *inter alia* collect information on concrete initiatives at national level and to hear their views on whether the initiative has improved legal certainty as regards the application of EU competition law. This will allow the Commission to monitor indicators such as the uptake of agreements, negotiations that failed due to uncertainty about the application of competition law and national legislative initiatives related to collective bargaining by solo self-employed.

Hence, the evaluation of this initiative will be an ongoing exercise of periodical stocktaking based on the aforementioned monitoring steps through close contacts with DG Employment, social partners, national authorities and other stakeholders.

Using this data, the Commission will decide whether the initiative pursues successfully its objectives. As indicated in section 6.1, the direct impacts of the initiative cannot be quantified. Therefore, this will be a qualitative analysis based in particular on the actions by NCAs, Member States legislative amendments, uptake of collective bargaining agreements by self-employed people – when available – and the opinions of stakeholders involved. In light of this the Commission will evaluate after the first 8 years of application (or sooner, if the monitoring reveals an urgency) whether the present initiative would need to be amended.

¹⁵⁶ Under Article 11(4) and 11(5) of Regulation 1/2003.

¹⁵⁷ Article 15(1) of Regulation 1/2003.

10. ANNEX 1: PROCEDURAL INFORMATION

10.1. Lead DG, Decide Planning/CWP references

The lead DG is DG COMP and the initiative is registered within the Decide Commission system under ISC/2021/03550

10.2. Organisation and timing

An inter-service steering group (ISSG), was established for preparing this initiative composed of the following Commission services: DG EAC, DG RTD, DG EMPL, DG MOVE, DG MARE, DG SANTE, SG, DG CNECT, DG GROW, DG ECFIN, DG AGRI, SJ, JRC.

Milestones	Date
Consultation in the context of the Digital Services Act package	2 June – 8 September 2020
Inception impact assessment	6 January – 8 February 2021
Meeting with ECN members	14 January 2021
Open Public Consultation	6 March – 28 May 2021
Meeting with ECN members	19 March 2021
1 st dedicated meeting with the social partners	12 April 2021
Meeting with ECN members	9 September 2021
Submission of the Impact Assessment to the Regulatory Scrutiny Board (RSB)	29 September 2021
Meeting with the RSB	27 October 2021
Public consultation on the draft guidelines	9 December - 24 February 2022
2 nd dedicated meeting with the social partners on the draft guidelines	9 February 2022

10.3. Consultation of the RSB

The Impact Assessment report was reviewed by the Regulatory Scrutiny Board (RSB) on 27 October 2021. The RSB delivered a negative opinion on 29 October 2021. The revisions introduced in response to the RSB opinion are summarised in the table below.

Summary of Regulatory Scrutiny Board's requests for improvement (1 st Opinion)	Modifications
(1) Clarify that this initiative and the parallel initiative on people working through digital platforms focus on different issues and only temporarily overlap.	The interplay between the proposal for a Platform Work Directive and the present initiative is now explained in the new Section 1.2 of this report.
(2) <i>a)</i> Clarify that the initiative only makes sure that competition law does not stand in the way of collective agreements and does not aim at improving working conditions <i>per se</i> .	Section 2.1 outlines the problem this initiative can tackle and clarifies that it cannot directly improve working conditions. Section 4.1 sets out more clearly that the general objective of the initiative is not the aim to directly improve the working conditions, but to avoid that competition law stands in the way of collective agreements of certain solo self-employed.
(2) <i>b)</i> Clarify that the initiative distinguishes between collective agreements: (i) falling outside the scope of Article 101 of the Treaty on the basis of substantive criteria (ii) falling within the scope of Article 101 TEFU but not enforced on the basis of the Commission's priorities	New section 4.3 clearly distinguishes between collective agreements that: i) could be considered to fall outside Article 101 TFEU on the basis of a teleological interpretation of the case-law; and (ii) collective agreements that would still in principle fall within Article 101 TFEU, but the Commission can commit not to intervene against them insofar this is within the limits of its discretion. The policy options designed in section 5.2 (in particular 5.2.2.) further expand upon this difference.
(2) <i>c)</i> Clarify the constraints imposed by the legal framework and the Commission's margin of discretion.	The constraints of the legal framework are explained in Sections 2.1 and 2.2 (and in particular 2.2.2.) The new Section 4.3 explains the margin of discretion that the

	Commission has.
<p>(3)</p> <p><i>a)</i> Clarify the problem scope and better establish in the problem definition the need for intervention and define policy objectives accordingly.</p>	<p>Sections 2, 3 and 4 have been substantially re-drafted, amended and simplified in order to better clarify the problem and its scope, the need for intervention and the policy objectives.</p>
<p>(3)</p> <p><i>b)</i> Better link the options to the policy objectives whilst discarding options that are not genuinely available.</p>	<p>Section 5, has undergone substantial modifications to better link the options to the policy objectives, as defined under the amended Section 4. The options that were not genuinely available have been discarded and explanations in that regard have been provided under Section 5.2.1.</p>
<p>(3)</p> <p><i>c)</i> Better design the elements of the remaining options and impact assess them as compared to the baseline, including the reasons why guidelines were chosen over a regulation.</p>	<p>Two alternative options have been designed in Section 5.2.2, which have been impact assessed in section 6 and compared in section 7. In sections 5.1, 6 and 7 it is clarified that under the baseline the problem would largely remain (with the exception of the mitigating effect of the Platform Work Directive that would exist also in the baseline). A specific Section 7.3 clarifies the reasons for choosing guidelines over a regulation by comparing the two instruments.</p>
<p>(4)</p> <p>Better reflect the stakeholders' views throughout the report and in the annexes</p>	<p>Further information on the stakeholders' views have been added throughout the report. In addition, the Synopsis Report in Annex 2 has been substantially amended to give a more comprehensive overview of the stakeholders' submissions.</p>
<p>(5)</p> <p>Better assess the impact of the options on SMEs and the inherent limits of that</p>	<p>Sections 6.2.4.3 and 7.2 include a more developed assessment of the impact of the</p>

exercise.	options on SMEs. The limits of the assessment of the impact of the policy options on SMEs are now better explained.
<p>(6)</p> <p>Better align the baseline of this initiative and the one on platform work and better identify (or refute) possible combined effects of both initiatives</p>	<p>Section 5.1 explains the baseline of this initiative, better aligning it to the initiative on platform work and better explaining the mitigating effect of the Platform Work Directive on the problem in the online economy. Section 2.2.4 explains that both initiatives relied on figures from the same source and clarifies what adjustments were done for the purposes of this initiative. Section 7.1 and Annex 4 explain that the projections for 2030 in this initiative assume that the Platform Work Directive will be implemented by then and that certain solo self-employed working through digital platforms will be reclassified as workers (to the extent expected in the impact assessment of the proposal for a Platform Work Directive).</p>
Summary of Regulatory Scrutiny Board's requests for improvement (2nd Opinion)	Modifications
<p>(1)</p> <p>The report does not set out clearly the criteria that distinguish the 'false self employed' from the 'self-employed' in the scope of the present initiative.</p>	<p>Section 1.2 explains the definition of the term "false self-employed" according to case law of the Court of Justice. It also clarifies how the initiative applies to all self-employed (including false self-employed as long as they have not been formally reclassified as workers) as well as the interplay with the Proposal for a Platform Work Directive concerning false self employed persons in the platform economy.</p>
<p>(2)</p> <p>For the priority setting in the comprehensive option, the report presents a number of criteria to define other 'solo self-employed' in an imbalanced negotiating position. As the report cites these as examples, it should clarify if the list is exhaustive or not and, if not, how 'solo self-employed' can be assured that</p>	<p>Section 5.2.2 now clarifies that the list is not exhaustive, and explains that the Commission will take into account the individual circumstances for exercising its priority setting.</p>

they qualify for this priority setting.	
(3) Regarding SMEs, the report should justify the chosen threshold by explaining why the the Commission Recommendation on the notion of SMEs gives the adequate criteria also in this context.	Section 6.2.4.3 explains that the initiative would use the concept of microenterprise because it is the smallest possible, clearly defined size at European level.
(4) The report does not sufficiently explain how the impact analysis has been adjusted to fit the revised set of options and how each of these compare in terms of costs and benefits. It should present and compare more clearly in the main report, both quantitatively and qualitatively, the costs and benefits of each of the options. It should be clear on how the number of solo self-employed persons affected under each option was estimated and to what extent the notion of 'dependence' is different in the options considered, at least in terms of impact on bargaining power	Section 7 now incudes several modifications in order to clarify the differences between options 1 and 2 in terms of bargaining power of the persons covered and in terms of the impacts, costs and benefits of the options. It also adds information on the estimates made with regard to the solo self-employed persons affected by each option.
(5) When discussing the preferred policy delivery instrument, the report should explain why the option of integrating the envisaged clarifications in the parallel revision of the EU competition rules on horizontal agreements was not considered.	Section 7.3 now includes an explanation of the reasons why the rules on horizontal agreements were not considered an adequate instrument.
(6) The report should clearly indicate when the initiative would be evaluated (ideally after 5 to 8 years).	Section 9 now clarifies that the evaluation will take place at the latest 8 years into the application of the Guidelines

10.4. Evidence, sources and quality

The report uses several sources of information.

- **Reports from academics, Eurofound, the OECD and ILO.** All references are cited in the main text of the report. To list a few: *ILO*, '[World Employment and Social Outlook, The role of digital labour platforms in transforming the world of work](#)', 2021, *ILO Flagship Report*; *OECD Employment Outlook 2019: The Future of Work*, *OECD Publishing*, Paris, <https://doi.org/10.1787/9ee00155-en> ; *OECD* (2019), *Negotiating Our Way Up: Collective Bargaining in a Changing World of Work*, *OECD Publishing*, Paris, <https://doi.org/10.1787/1fd2da34-en>.; *Eurofound* (2017), *Exploring self-employment in the European Union*, Chapter 1; https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1718en.pdf
- **Eurostat and Eurofound statistical data:**
 - Eurostat European Union Labour Force Survey <https://ec.europa.eu/eurostat/web/microdata/european-union-labour-force-survey>
 - Eurofound (2017), *Exploring self-employment in the European Union* https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1718en.pdf
 - Eurofound (2019), *On-location client-determined moderately skilled platform work: Employment and working conditions*. <https://www.eurofound.europa.eu/data/platform-economy/records/on-location-client-determined-moderately-skilled-platform-work-employment-and-working-conditions>
 - Eurostat Culture Statistics, 2019 Edition. <https://ec.europa.eu/eurostat/documents/3217494/10177894/KS-01-19-712-EN-N.pdf/915f828b-daae-1cca-ba54-a87e90d6b68b?t=1571393532000>
 - Pesole, A., Urzi Brancati, M.C., Fernandez Macias, E., Biagi, F. and Gonzalez Vazquez, I., *Platform Workers in Europe Evidence from the COLLEEM Survey*, EUR 29275 EN, Publications Office of the European Union, Luxembourg, 2018, ISBN 978-92-79-87996-8, doi:10.2760/742789, JRC112157. <https://publications.jrc.ec.europa.eu/repository/handle/JRC112157>
 - Urzi Brancati, M.C., Pesole, A. and Fernandez Macias, E., *New evidence on platform workers in Europe*, EUR 29958 EN, Publications Office of the European Union, Luxembourg, 2020, ISBN 978-92-76-12949-3, doi:10.2760/459278, JRC118570. <https://publications.jrc.ec.europa.eu/repository/handle/JRC118570>
 - **Ecory's Impact Assessment support study (including the references therein).**
- Finally, the report relies on the **feedback from the public consultations** described in Section 11 (Annex 2) of this report. as well as from several conferences and webinars organised by third parties on the topic.

11. ANNEX 2: STAKEHOLDER CONSULTATION (SYNOPSIS REPORT)

A wide range of stakeholders have been consulted on this initiative. Alongside a number of meetings with representatives of Trade Unions, Businesses, National Administrations and International Institutions, the Commission has conducted several public consultations.

1. From 2 June to 8 September 2020, the Commission consulted on the working conditions of platform workers in the context of the Open Public Consultation for the Digital Services Act package (DSA).
2. The call for feedback on the Inception Impact Assessment (IIA) was open from 6 January to 8 February 2021.
3. An Open Public Consultation on the basis of a detailed questionnaire was open from 5 March to 31 May 2021. A dedicated meeting with social partners took place on 12 April 2021.
4. On 14 January, 19 March and 8 September 2021, national competition authorities members of the European Competition Network were also gathered to discuss the evolution of the initiative (they expressed their views through their participation in the OPC, which is referred to in the Sections below).
5. Between 9^h December 2021 and 24 February 2022, the Commission consulted stakeholders on draft Guidelines regarding collective agreements regarding the working conditions of self-employed people. A dedicated meeting with social partners took place on 9 February 2022.

The participation was high in all consultations:

11.1. Participation in the “Have your say” website

11.1.1. Answers to Section V of the DSA public consultation

Not all participants to the public consultation replied to the questions in Section V. However, the questions that received more answers in that Section¹⁵⁸ gathered 346 answers, of which 281 came from EU or non-EU citizens.

11.1.2. Feedback to the IIA

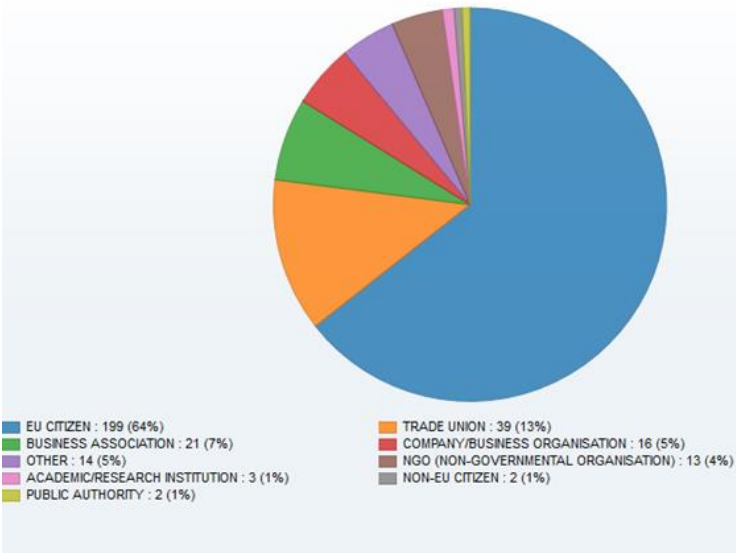
The IIA received 308 contributions on the Better Regulation portal, of which 201 came from EU or non-EU Citizens (most of which were solo self-employed people themselves); 39 came from Trade Unions; 37 came from companies or business organizations, and the rest came from other institutions, such as NGOs or Academia. It is important to highlight, for the IIA and the OPC, that some solo self-employed people associations qualified themselves as “unions” whereas some others used the qualification of “business associations”. This makes the task of

¹⁵⁸ Question 37: To what extent could the possibility to negotiate collectively help improve the situation of individuals offering services through online platforms?

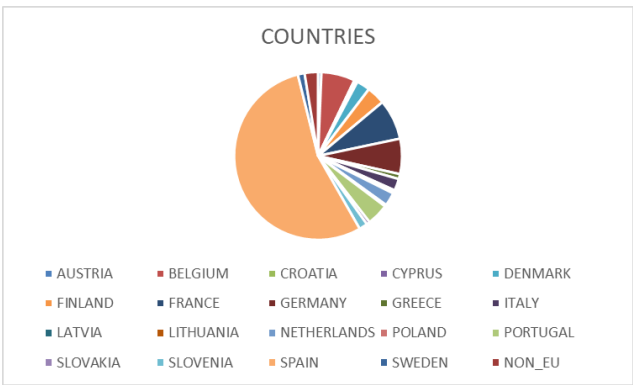
defining the positions of stakeholders from one and the other side of the social dialogue difficult (whereas business associations are traditionally considered to be employers, in this case the positions of some of them did not depart significantly from the side of labour).

44 of the contributions included a Position Paper. Additionally, 17 Position Papers were received directly by email.

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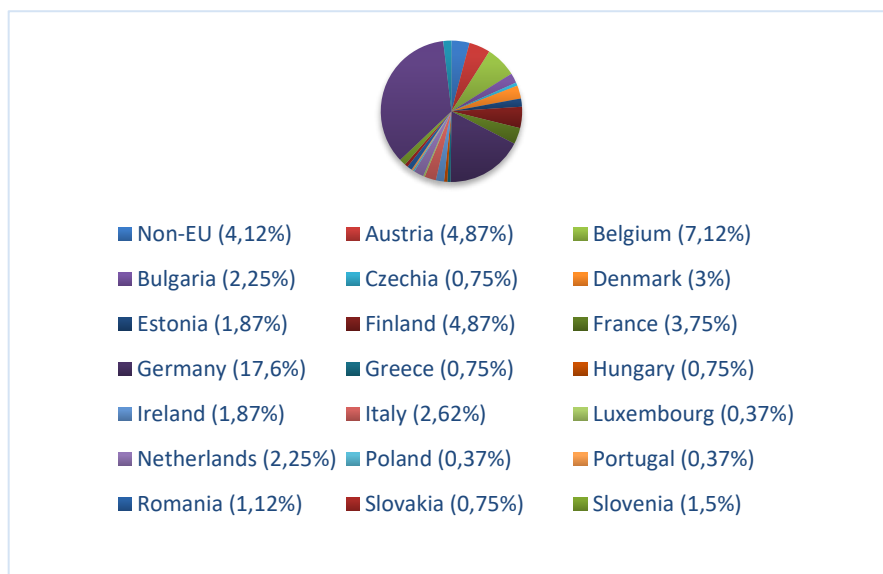
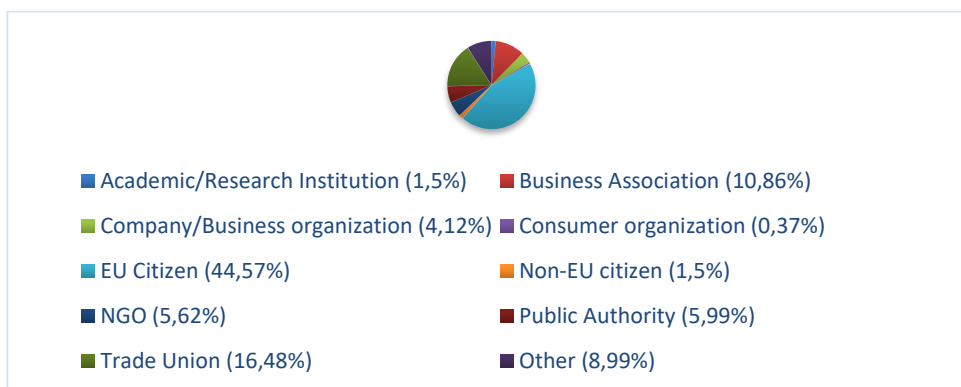
Per country, the contributions came from: Austria: 2; Belgium: 20; Croatia: 1; Cyprus: 1; Denmark: 8; Finland: 11; France: 24; Germany: 21; Greece: 3; Italy: 7; Latvia: 1; Lithuania:1; Netherlands: 8; Poland: 1; Portugal:13 ; Slovakia: 2; Slovenia: 5; **Spain: 168**;¹⁵⁹ Sweden: 4; Non-EU countries: 8



11.1.3. Answers to the OPC

The OPC received 267 contributions on the Better Regulation portal split as follows:

¹⁵⁹ Most contributions from Spain were submitted by solo self-employed in the translation sector.



There were also 17 additional contributions received in form of papers in the dedicated functional mailbox.

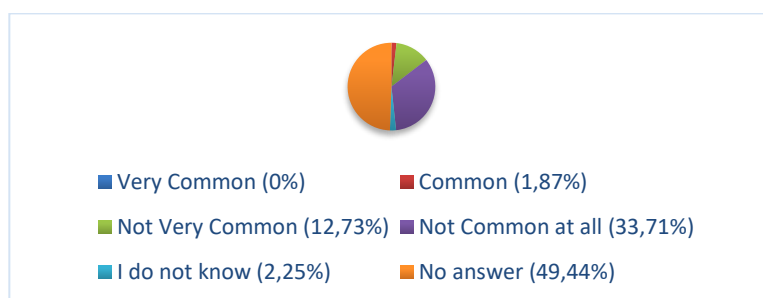
11.2. Synopsis of consultation results

11.2.1. *Questions relating to the existence of the problem*

The OPC included a question (question III) asking respondents how frequent collective bargaining is in their country for self-employed people. 132 (49.44%) of the participants answered that they did not know, this includes all EU Citizens. 90 (33.71%) participants indicated that they are not common at all and 34 (12.73%) that they are not very common: 41 of those are Trade Unions (out of a total of 44; including UNIEuropa, ETUC, FNV, 3F, HK); 32 are Businesses or business associations (out of a total of 40); 13 are Public authorities (including PL NCA, FR NCA, LX NCA, SE NCA, NO NCA, AT NCA, NL NCA, BE NCA, CZ NCA, BL NCA).

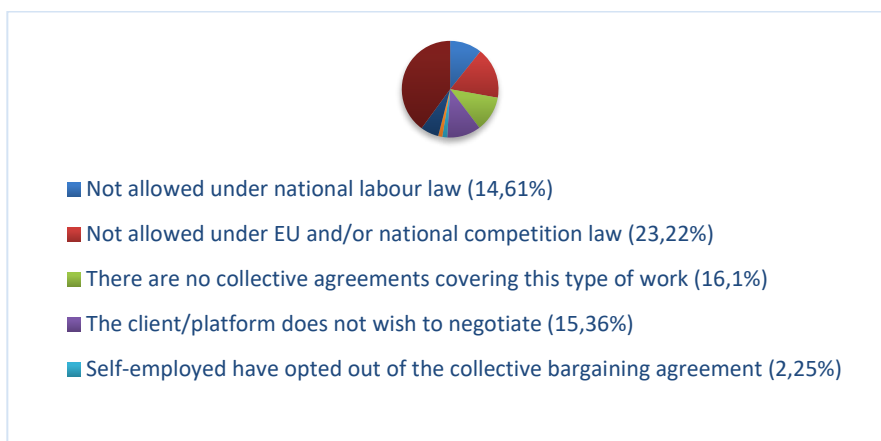
Only 5 (1.87%) answered that they are common (no participant indicated that they are very common) these included:

- the RO NCA, mentioning Agriculture; Agro-industry (chemical inputs, seeds, machinery); Construction, urban planning & development; Education; Energy (electricity, gas and water); Environment & nature protection; Financial business (bank, insurance, etc.); Food/beverage industry; Forestry and hunting; Health and social work; Mining and quarrying; Soil remediation; Tourism/recreation; Waste & waste recycling.
- INMA-National Institute of Research-Development for Machines and Installations designed to Agriculture and Food Industry (RO), mentioning Research.
- Taxis 4 Smart Mobility Coalition - European voice of the taxi industry (BE), mentioning Transport & Mobility.



Most respondents to the OPC linked the question: *What are, in your view, the reasons why solo self-employed people cannot benefit from collective bargaining agreements in your country?* to the threat of the application of competition rules.

145 (54.31%) participants gave no answer. **62** (23.22%) indicated that it is not allowed under EU and/or national competition law. Of those, 11 are businesses or businesses associations; 7 qualify themselves as NGOs, but in reality seem to be self-employed associations; 5 are public authorities (including the NO, AT, NL and CZ NCAs) and 31 are Trade Unions (including UNI Europa, ETUC, FNV, 3F, HK). **43** (16.1%) say that there are no collective agreements covering this type of work. Of these, 6 are Trade Unions from Finland (2), NL, CZ, DE, ET; 2 academics from RO and AT; 16 businesses or businesses associations; 6 NGOs (in reality, self-employed associations); 7 public authorities, including the LX, SE, NO, PL, AT NCAs. **41** (15.36%) argued that the client/platform does not want to negotiate. 24 of these are Trade Unions, UNI Europa, ETUC, FNV; 1 is an academic from Romania; 8 are business associations (gathering self-employed); 5 NGOs (in reality, self-employed associations); the NO NCA. **39** (14.61%) said that it is not allowed under national labour law. Of these, one is a French Academic; 8 are businesses or businesses associations, including Bolt and 5 NGOs (in reality, self-employed associations); 4 are public authorities, including the FR, NO and CZ NCAs; 14 are Trade Unions (mainly national and sector-specific). Finally also **6** (2.25%) replied that self-employed people had opted out of the agreement. This includes FNV and two self-employed people.



On the fact that competition rules might be an obstacle to the adoption of collective agreements, some employers and employers' associations denied this fact in their responses. For example, Deliveroo submitted that the low level of unisation in platforms is not due to competition rules, but to the fact that unions insist to favour requalification of the status of people working through platforms from self-employed to workers. Likewise, SME United indicated that the obstacle is not in the application of competition rules, but rather the fact that the concept of collective bargaining is not adapted to the situation of self-employed, who are undertakings. For SME United, it is problematic that some solo self-employed face precarious situations, but this should not be tackled by competition law. The Confederation of German Employers' Associations or (Bundesvereinigung der Deutschen Arbeitgeberverbände – BDA), expressed similar opinions, insisting that *“it is not appropriate or necessary to change the existing EU competition rules in order to allow self-employed workers to engage in collective bargaining”*.

However, to the question *“What are, in your view, the reasons why solo self-employed cannot benefit from collective bargaining agreements in your country? (several answers possible)”* in the Open Public Consultation, the option that *“it is not allowed under EU and/or national competition law”*, came up as the main reason, with 32% of those who answered the question pointing at it.

The employers' association Business Europe, in its answer to the Open Public Consultation claimed that Competition rules should not act as a barrier to self-employed who wish to represent themselves, and to jointly negotiate, and that the European Commission should clarify the application of EU competition rules to collective agreements concluded by self-employed.¹⁶⁰

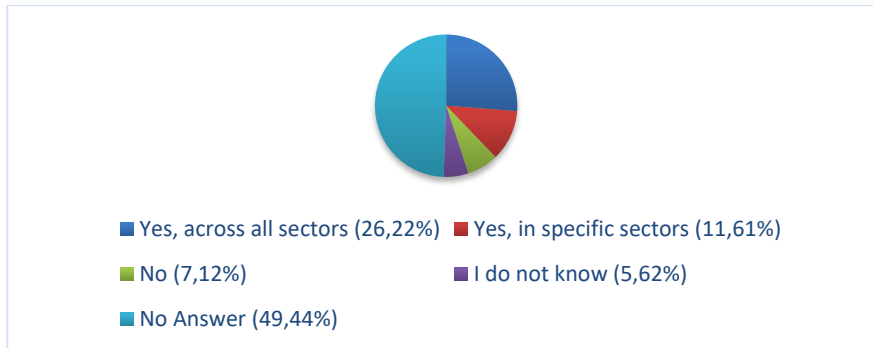
Many unions and self-employed associations¹⁶¹ also provided in the Open Public Consultation specific examples of occasions when negotiations to reach a collective agreement were

¹⁶⁰ Business Europe also claimed that collective agreements by self-employed should not concern fees or wages.

¹⁶¹ Among others, the International Federation of Actors (FIA), UNI Europa, ETUC, the Federation of Screenwriters in Europe, the Danish Union of Journalists, CSC United Freelancers (Belgium); the Spanish Association of Doctors in the private sector (UNIPROMEL).

prevented in a specific sector either due to sanctions or threats thereof by National Competition Authorities or due to the fact that companies refused to enter into negotiations claiming that they would be contrary to competition rules.

Along those lines, most respondents to the OPC indicated that solo self-employed lack power to negotiate their working conditions (either in all sectors or in specific ones).



Lack of clarity on the legality of collective bargaining for self-employed was also one of the reasons mentioned by respondents to the DSA public consultation as an obstacle to collective bargaining of self-employed (question 39). Unions and citizens providing feedback to the Inception Impact Assessment also pointed to the fact that the weak bargaining position of self-employed is a real problem pushing revenues down for those groups unfairly.

During the Open Public Consultation, of the 120 answers received to the question *“In your view or based on your experience, do solo self-employed lack the power to negotiate with companies their payment and other working conditions?”*, 61.6% replied that they do across all sectors, 25.8% replied that they only do in specific sectors and only 12.5% replied that solo self-employed do not lack power to negotiate.¹⁶²

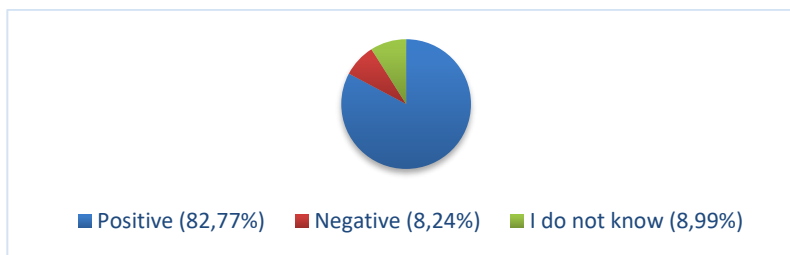
Most of those who claimed that solo self-employed do not lack the power to negotiate are employers organizations, and their redacted answers show a more nuanced approach: UNIZO (BE) and the Confédération de Petites et Moyennes Entreprises (FR) admitted that solo self-employed are in a weak negotiating position, but according to them this situation is not different to that of any other SME. Also, the Norwegian Competition Authority indicates that the lack of negotiating power must not be presumed, but it is likely to concur in case of digital labour platforms. The Danish Union 3F and the French Union des Entreprises de Proximité both argued that solo self-employed must be free to set their prices and if they lack the independence to do so, then they are likely to be “false” self-employed. Finally, the Estonian platform Bolt explained that existing legislation (such as the P2B Regulation) already covers the relationship between individuals and the platforms through which they provide services.

¹⁶² Initially, 19 respondents indicated that solo self-employed do not lack the power to negotiate. However, the redacted answers of four of those respondents (an individual self-employed, a union, a research center and a freelancers’ association) clearly show that they meant that solo self-employed do lack the power to negotiate.

The group of respondents answering that solo self-employed do lack negotiating power across all sectors or for specific sectors was very diverse, including unions, freelancers associations, public authorities and some employers, including the platform company Delivery Hero SE.

11.2.2. *Questions relating to support for the initiative*

The OPC included the question: “Do you think that it would be a positive or negative development if competition law were not to stand in the way of collective bargaining by solo self-employed?” The vast majority of stakeholders answered it would be a positive development.



- 220 (82%) answered that the effects would be **positive**. Of this:
 - 122 were EU citizens (of which, many describe themselves as solo self-employed) and 4 non-EU citizens
 - 40 were trade unions (including FNV, EMI, UNI Europa, IndustriAll European Trade Union, ETUC, CESI, HK, FNV, IG Metall)
 - 10 Public Authorities: GR NCA; LX NCA; Ministry of Economic Affairs and Employment of Finland; Ministero del lavoro e delle politiche sociali; NO NCA; CZ NCA; RO NCA; AT NCA; NL NCA; PL NCA

The **FR NCA** highlighted that this change would allow to legitimize some initiatives undertaken in national law in order to allow self-employed to engage in social dialogue with labour platforms, such as the recent adoption in France of sectoral initiatives in favor of «mobility» platform workers, to whom the initiative grants a right of representation and collective bargaining (Act of 24 December 2019).

The International Federation of actors indicated that the initiative would open the door to improving working conditions for the entire workforce and ensuring that remuneration is decent and in line with sectoral norms for all workers, regardless of status. It would represent an important step forward towards the principle of equal pay for equal work.

The platform company **Glovo** welcomed the fact that the Commission is promoting a discussion on collective bargaining rights for self-employed workers, as this will only improve working conditions for Glovo’s collaborators by consolidating a space to present, discuss and secure aspects of their legal situation that demand definition.

- 21 (7.8%) answered in the **negative**. Of which:
 - 16 Businesses, mainly employers' representations: Delivery Hero SE; Zentralverband des Deutschen Handwerks (ZDH); German Confederation of Skilled Crafts and Small Businesses; UNIZO; Fédération Française du Bâtiment; Confederation of Finnish Industries; Move EU; Confédération des Petites et Moyennes entreprises ; Computer and Communications Industry Association (CCIA Europe); Wirtschaftskammer Österreich; Arbeitgeberverband der Versicherungsunternehmen in Deutschland; Bolt; Bodegas Tamargada; Estonian CCI; The Federation of Finnish Enterprises (Suomen Yrittäjät ry); Union des entreprises de proximité (U2P); Peter Kominka e. v.; Slovenska Asociácia malých a stredných podnikov a živnostníkov.
 - 2 trade unions: Federazione Italiana Ristorazione; 3F- United Federation of Workers in Denmark

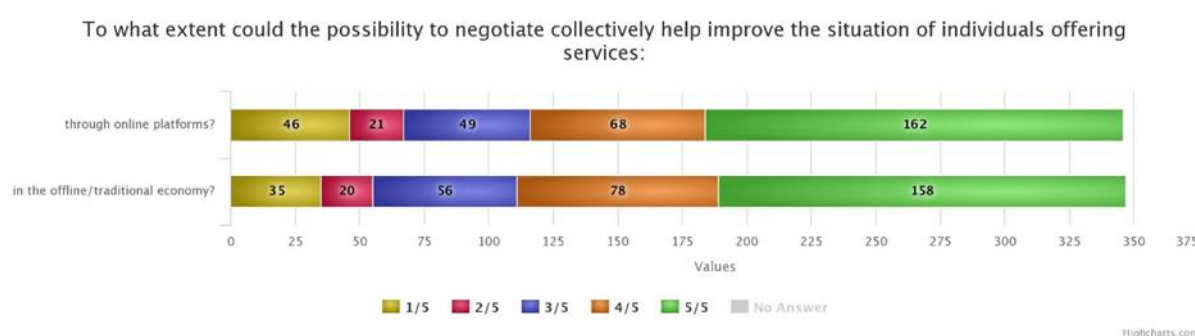
Delivery Hero SE recognized that collective bargaining is a very important issue, which is enshrined in the EU Charter of Fundamental Rights and the European Pillar of Social Rights. They also acknowledged that there is still potential to be realized in the field of platform work. However, they submitted that giving traditional 'collective negotiation' rights to self-employed professionals in their sector is not the right approach to address their situation. Instead, an adequate and clear regulation of their status would be a more promising way forward. This includes the modernization of the existing employment categories to allow governments and platforms to further improve the social security and benefits of self-employed workers, while ensuring legal certainty, i.e. enabling platforms to provide more benefits to self-employed workers without facing an increased reclassification risk. Similarly, **Bolt** claimed that collective bargaining should be a privilege reserved to trade unions and such a change would be to the detriment of the trade unions' privileges. Collective bargaining should be an employment law matter and it is inappropriate for much of the differentiated platform economy.

Move EU - The European Association of On-Demand Mobility (representing platforms) claimed that drivers using ride-hailing platforms typically use different platforms and are not exclusively working on a single platform. This flexibility for drivers is a key aspect of their work that enables flexibility. This also means that platforms are competing for the attention of drivers, by offering the most attractive conditions. Collective negotiation to set a fare or earning rate would challenge many areas on which businesses compete and would therefore hamper competition. Policies should therefore aim at incentivizing responsible behaviors by companies instead of penalizing them with additional legal risks when ensuring adequate protection for all platform workers. The unique and distinct challenges of online and on-location low-skilled platform work must be recognized by regulators. Concepts of representation based on "traditional" employment pose several critical challenges for platform-enabled work, such as the great diversity of the workforce and related issues of identifying adequate representatives. In addition, the vast variety of different types of platform-enabled work does not allow for generalized policies for the whole field.

3F- United Federation of Workers in Denmark argued that as long as many solo self-employed are false self-employed and should enjoy the rights and protections as workers, they cannot support a revision of the competition law, as this will de facto create a third category for these workers. In the same line, the Confédération des Petites et Moyennes entreprises (FR) and Union des entreprises de proximité (U2P) (FR) claim that the creation of a new right to collective bargaining will not clarify the doubts concerning the status of platform workers. That is, granting a right to collectively bargain to some self-employed (depending on whether they use a platform for the exercise of their profession) does not define their status, and it will not reduce litigation about labor relationships.

This results are consistent with the feedback received in the previous consultations.

Section V of the DSA public consultation included the question “*To what extent could the possibility to negotiate collectively help improve the situation of individuals offering services through online platforms?*” The feedback was also mainly positive:



The question gathered 346 answers, of which 281 came from EU or non-EU citizens: Almost 66,5% of respondents indicated that the possibility to negotiate collectively would help improve the situation of individuals offering services through platforms. The percentage rose to 68,2% for the traditional economy.

The percentage of citizens responding positively was 64,7%, against 18,8% of citizens giving 1 or 2 points. Concerning other respondents, 73,8% gave 4 to 5 points (mainly Unions, but also business associations and NGOs), against 21,5% that gave 1 or 2 points (mainly business associations).

Equally, the feedback from the IIA showed overall support from citizens and unions, and rather criticism by businesses.

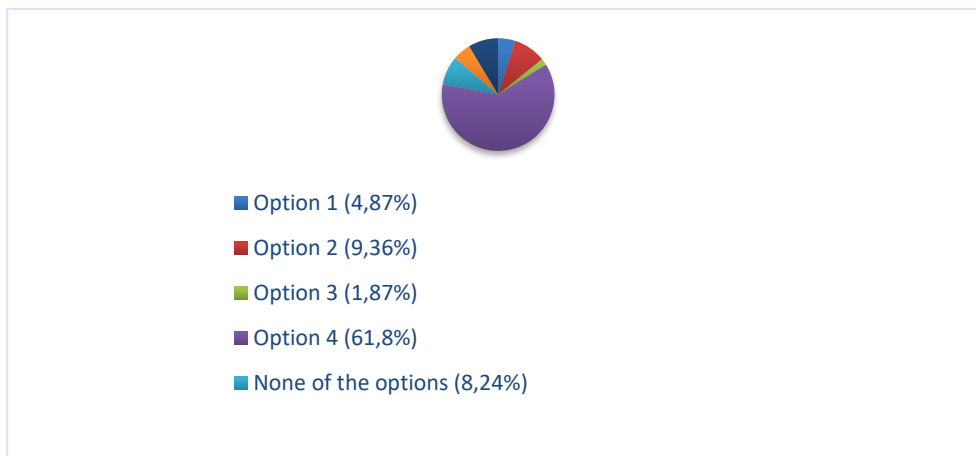
11.2.3. Questions relating to the options

Both the IIA and the OPC included questions on the four options that were originally contemplated. These options considered covering with the initiative the collective agreements of: (i) all solo self-employed providing their own labour through digital labour platforms (option 1); (ii) all solo self-employed providing their own labour through digital labour platforms or to professional customers of a certain minimum size (option 2); (iii) all solo self-employed providing their own labour through digital platforms or to professional customers of

any size with the exception of regulated (and liberal) professions (option 3), and (iv) all solo self-employed providing their own labour through digital labour platforms or to professional customers of any size. As explained in Section 5.2.1, options 1, 3 and 4 have been discarded.

Most respondents providing feedback to the IIA did not express a clear preference for one or the other option.

During the OPC, the option that gathered strongest support was option 4. 22.18% of the respondents indicated that they either did not know what the most adequate option was, that they did not agree with any of the options or that EU competition law should continue to apply to collective agreements by solo self-employed.



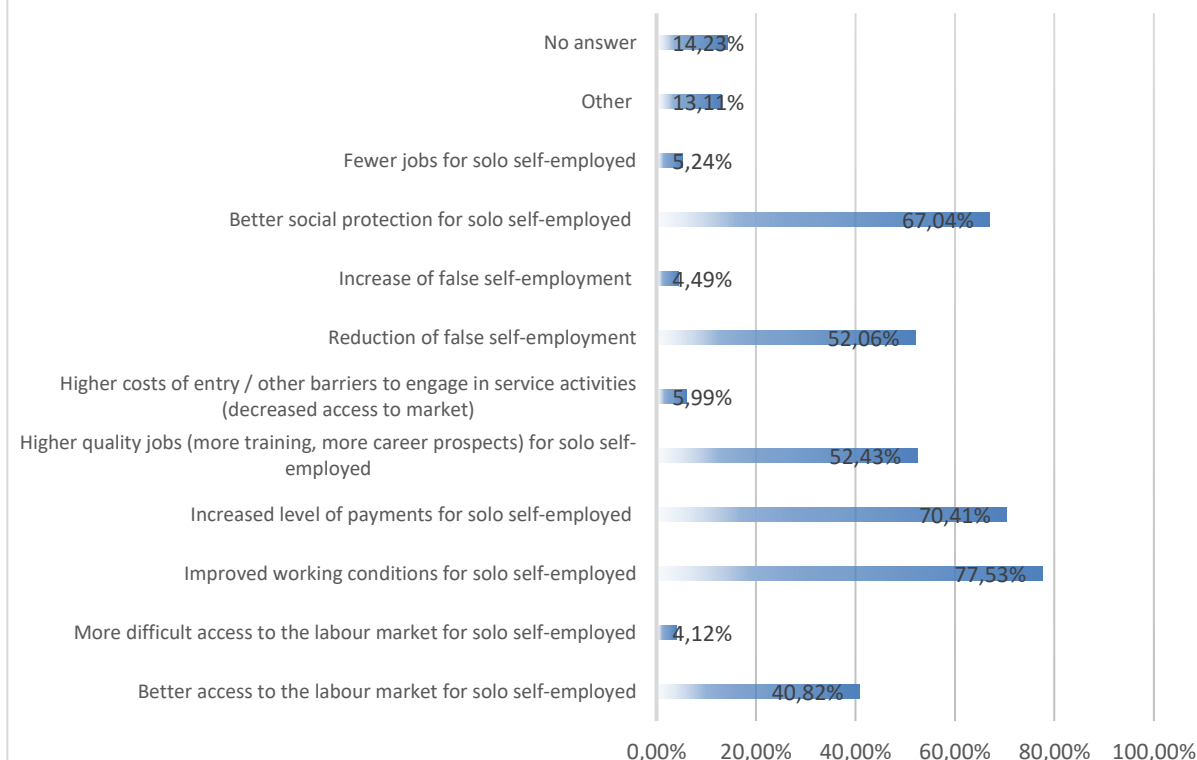
11.2.4. *Questions relating to possible impacts*

The OPC asked stakeholders their views about the likely impacts of the initiative. The feedback is summarized in the tables below:

6. *In your view, will an initiative ensuring that EU competition law does not stand in the way of collective bargaining by solo self-employed lead to social impacts?*

- 229 (85.77%) answered **yes**
 - 173 answered that the social impacts would be **positive or very positive**
 - 14 answered that the social impacts would be **negative or very negative**

WHICH ONES?



Among the most positive effects mentioned by the respondents, were improved working conditions for solo self-employed (77.53%); increased level of payments for solo self-employed (70.41%); better social protection for solo self-employed (67.04%); higher quality jobs for solo self-employed (52.43%), and reduction of false self-employed (52.06%).

Those that answered that the effects would be negative or very negative are mainly employers' associations and platform companies, like **Delivery Hero SE, UNIZO, the Fédération Française du Bâtiment and Bolt**. According to them, negative effects would be felt mainly in the form of more difficult access to the labour market for solo self-employed.

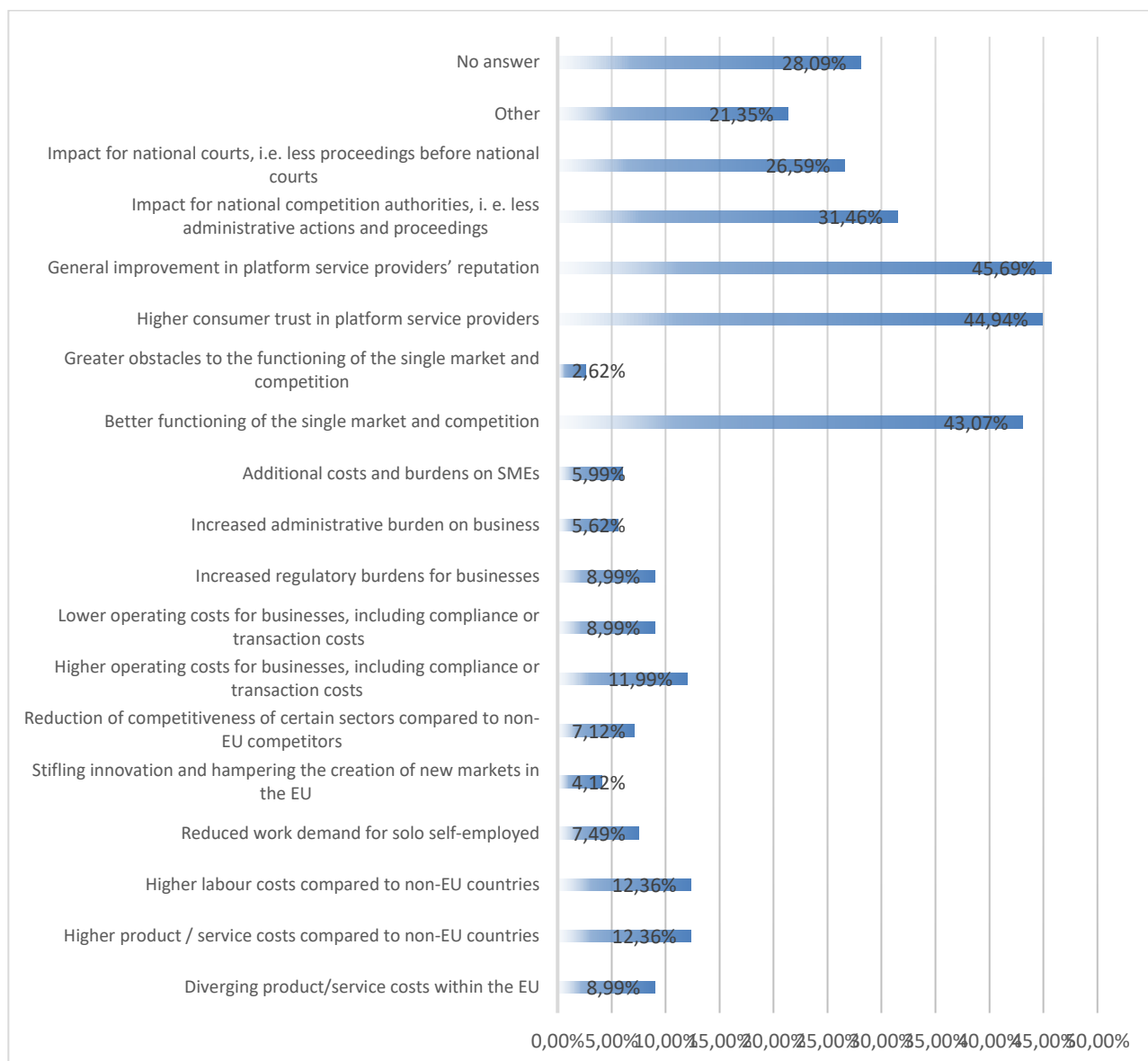
The platform company **Glovo** explained that creating spaces for negotiation and coordination among self-employed people and digital platforms can have a significant positive impact on the couriers' experience. It submitted that is of utmost relevance to discuss means to negotiate, elevate consensus, increase transparency, receive feedback and recommendations, and increase awareness of the views of people collaborating with digital platforms. All of the above would also help set up better communication bridges between all parties involved considering the heterogeneity of couriers' profiles and the relevant percentage of short-time users of platforms - especially if such means are implemented in all Member States. Glovo considered that the permanent forums that such an initiative would create can also help alleviate the regulatory fragmentation across Member States by making visible common standards and expectations that couriers share.

The Bundesarbeitskammer (Austrian federal chamber of labour) submitted that an initiative to introduce collective bargaining would have a positive social impact, such as better working conditions, higher pay, better quality jobs or a reduction in bogus self-employment. As a result of the higher purchasing power of the platform, workers are also expected to have positive effects on the economy as a whole.

On the contrary, the **Landsorganisationen I Sverige (SE Trade Union)** did not see any added value for EU action in this area. It submitted that if any, the measures should be non-binding and apply for all companies regardless of size aiming only at bogus self-employed. No rules of protecting workers rights should depend on the size of the company.

7. In your view, will an initiative ensuring that EU competition law does not stand in the way of collective bargaining by solo self-employed lead to economic impacts?

- 192 (71.91%) answered **yes**
 - 145 indicated that the economic impacts would be **positive or very positive**
 - 13 indicated that the economic impacts would be **negative or very negative**



Among the most positive effects mentioned by the respondents, were a general improvement in platform service providers' reputation (45.69%); higher consumers' trust in platform services providers (44.94%); better functioning of the single market and competition (43.07%); impact for national competition authorities (31.46%), and impact for national courts (21.35%).

Those that answered that the effects would be negative or very negative are mainly employers' associations and platform companies, like **Delivery Hero SE, UNIZO, the Fédération Française du Bâtiment and Bolt**. According to them, negative effects would be felt mainly in the form of higher product/services costs compared to non-EU countries and within the EU, and reduced competitiveness with regards to non-EU countries and within the EU.

Specifically concerning SMEs, associations of small and medium enterprises claimed that any of the options would prompt more effects on SMEs than other companies. **SME United** claimed that the options would impose unequal treatment between SMEs or microenterprises, which would be treated as employers, and solo self-employed. However, these categories of

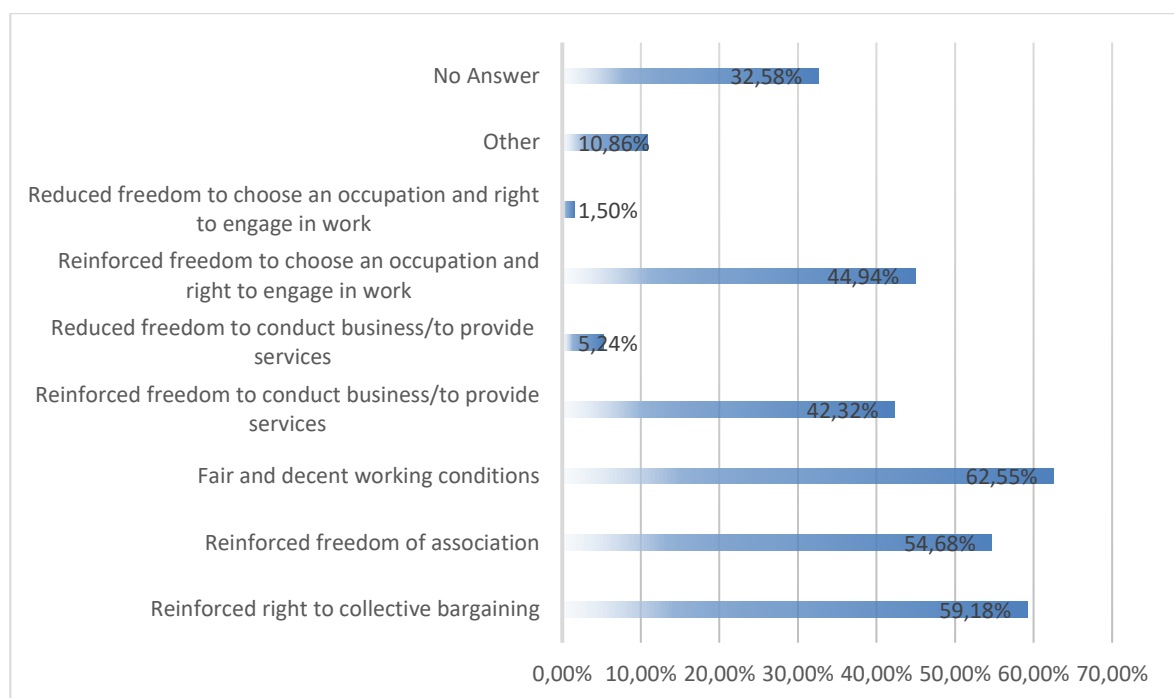
undertakings are often competitors in the same markets. In the same line, the French **Confédération des Petites et Moyennes Entreprises** explained that many SMEs are also in a situation of economic dependence vis-à-vis a limited number of distributors.

The **Confederation of Finnish Industries** argued that any obligation to negotiate would impose a higher administrative burden on SMEs, and should be avoided.

Finally, **BusinessEurope** welcomed the possibility to collectively negotiate for solo self-employed (excepted concerning rates), but they think that SMEs should be protected from the initiative.

8. In your view, will an initiative ensuring that EU competition law does not stand in the way of collective bargaining by self-employed lead to any impact on fundamental rights and freedoms?

- 180 (67.42%) answered **yes**
 - 151 indicated that the impacts would be **positive or very positive**
 - 7 indicated that the impacts would be **negative** (no respondent said very negative)



Among the most positive effects mentioned by the respondents, were fair and decent working conditions (62.55%); reinforced right to collectively bargain (59.18%); reinforced freedom of association (54.68%); reinforced freedom to choose an occupation and right to engage in work (44.94%) and reinforced freedom to provide services (42.32%).

Those that answered that the effects would be negative or very negative are mainly employers' associations and platform companies, like **Delivery Hero SE**, **UNIZO**, the **Fédération**

Française du Bâtiment and Bolt. According to them, negative effects would be felt mainly in the form of more difficult access to the labour market for solo self-employed.

11.3. Dedicated meeting with social partners

Although the Commission does not apply Articles 153 and 154 of the Treaty in the procedure leading to the adoption of the initiative, the subject has an important social component and therefore social partners' views are particularly relevant. For this reason, the Commission organized a dedicated meeting with social partners, taking inspiration from meetings organized in the framework of the procedure foreseen in Article 154 of the Treaty.

The participants to the meeting (together with the Commission) were:

- On the side of employers:
 - BDA - Confederation of German Employers' Associations
 - BDI - Federation of German Industries
 - BusinessEurope
 - CEOE - Spanish Confederation of Employers' Organizations
 - DA - Confederation of Danish Employers
 - HOTREC – Hospitality Europe
 - IV -Federation of Austrian Industries
 - Pearle - Performing Arts Employers' Associations League Europe
 - SALAR - The Swedish Association of Local Authorities and Regions
 - SGI EUROPE
 - SMEunited
 - SN - Confederation of Swedish Enterprise
 - UNISOC - Confederation of Social Profit Enterprises
 - VNO-NCW - Confederation of Netherlands Industry and Employers
 - WEC EUROPE
 - YRITTAYAT – The federation of Finnish Enterprise
- On the side of trade unions:
 - ACV-CSC - Confederation of Christian Trade Unions
 - CFDT - French Democratic Confederation of Labour
 - CGIL - Italian General Confederation of Labour
 - CITUB - Confederation of Independent Trade Unions of Bulgaria
 - DGB - German Trade Union Confederation
 - EFJ – European Federation of Journalist
 - EFJ – European Federation of Journalist
 - ETUC
 - Eurocadres/ CFDT Cadres
 - FH - Danish Trade Union Confederation
 - FIA/EAEA – international federation of actors
 - FIM/EAEA – International federation of musicians
 - LBAS - Free Trade Union Confederation of Latvia

- LPS - Lithuanian Trade Union "Solidarumas"
- SAK - Central Organization of Finnish Trade Unions
- UGT - General Union of Workers
- UNI Europa

During the meeting, the social partners generally embraced the idea that the Commission should act to help certain self-employed people (not only platform workers) to improve their working conditions. They also appreciated the cautious approach taken by this initiative.

Nevertheless, the social partners flagged a number of concerns during the meeting:

- The role of the social partners

Most of the trade unions and the employer's organizations agreed that this initiative should respect the status of the social partners, through which collective bargaining takes place at national level.

For trade unions this means in particular that the negotiations should be done only by trade unions.

On the other side, the employers' organizations expressed the fear that this initiative could force them (directly or indirectly) to enter into collective bargaining agreements with solo self-employed people.

- Personal scope of the initiative

Employers' organizations expressed the fear that this initiative would blur the lines (directly or indirectly) between the self-employed people and the workers. The employers' organizations considered that this initiative should not be called "collective bargaining" as this term should be reserved for negotiation/agreements between employers on the one hand and workers on the other hand. The employers' organization representing SMEs further feared that the Commission would touch upon the concept of "undertaking" and that the initiative would lead to discrimination between SMEs, i.e. between self-employed people with workers and self-employed people without any.

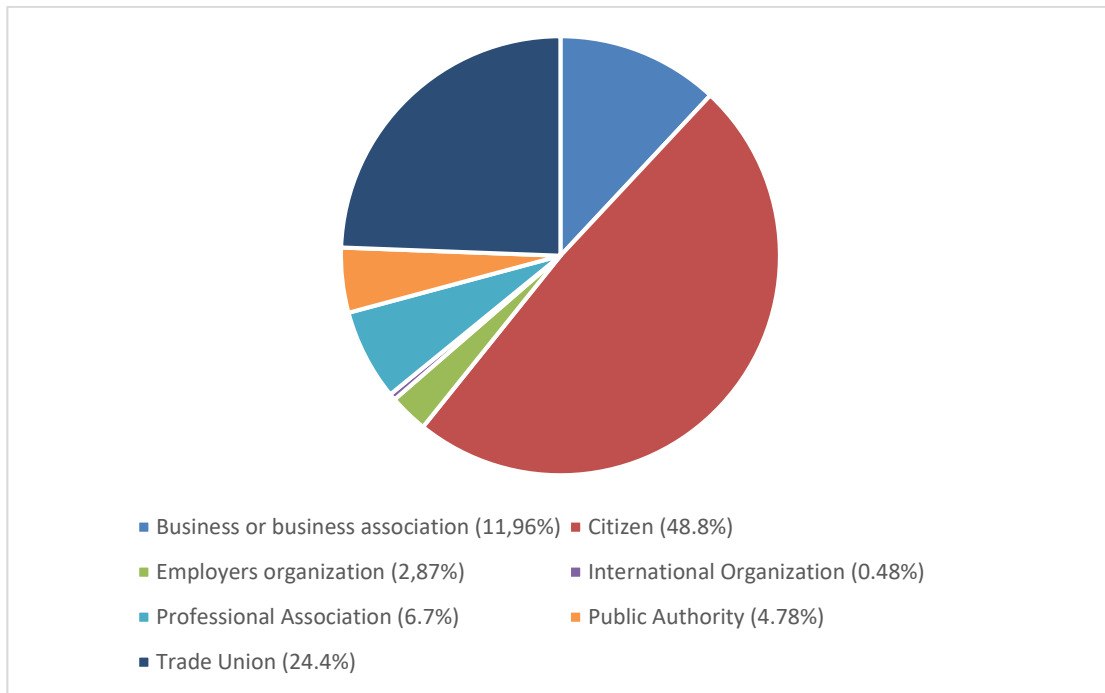
On the other side, trade unions argued that there should be no discrimination between "workers" in relation to collective bargaining, which is a fundamental right for all. In any case, competition law should not trump this fundamental right. Collective bargaining agreement as such should not fall at all within the scope of competition law.

- Choice of the instrument

Both the trade unions and the employer's organizations agreed that the Commission's proposal should lead to guidelines rather than a regulation.

11.4. Public consultation on the draft Guidelines

The Commission received 209 submissions providing feedback on the draft Guidelines.



As was the case in the previous public consultations, most of the participants (102) were individual citizens. All of them were solo self-employed, and most of them (78) were Spanish translators.

The submissions of these citizens were all very similar: all of the citizens participating in the public consultation expressed their support towards the initiative.

51 (24.4%) of participants were trade unions. Some of the unions did not manifest a general view on the draft Guidelines. The majority of trade unions (48) expressed their overall support and positive stance towards the draft Guidelines. For example, UNI Europa “(...) *welcomed the initiative of the European Commission to provide legal certainty and remove barriers that have been hampering the efforts of self-employed workers to associate freely and to collectively bargain setting minimum terms and conditions of employment*”. CESI submitted that “*CESI considers the [draft Guidelines] as an important step towards assuring effective collective bargaining rights of solo self-employed persons. CESI welcomes in particular the European Commission’s assessment that Article 101 TFEU on rules applying to undertakings in the Single Market should in the future be interpreted in a narrow manner which does not stand in the way of collective bargaining for the self-employed*”.

The main remark of unions about the draft Guidelines concerned the role of social partners in the collective negotiations. For example, according to the European Arts&Entertainment Alliance (EAEA) “*trade unions and employers as social partners remain the only legitimate actors to engage in collective bargaining as an intrinsic element of social dialogue. The current formulation risks opening a door to the bypassing of unions by promoting ‘bargaining’ instead with weakly constituted associations, forums or even ‘yellow’ unions*”. Therefore, according to these unions, the Guidelines should make clear that collective negotiations can

only be conducted with the intermediation of social partners. By contrast, some other unions, rather than asking that the Guidelines impose this specific system, argued that the Guidelines “*may not in any way affect national practice to negotiate, conclude and enforce collective agreements*” (Danish Trade Union Confederation, FH). Along the same lines, the Swedish Trade Unions Confederation (LO) claimed that “*the guidelines must [...] be designed in a way that does not impinge in areas where EU lacks competence or areas where the competence between the EU and the member states are shared and thus create confusion between competition law and nationally defined labour law concepts*”.

Another remark in trade unions’ submissions was the treatment of collective actions refusing to supply labour in the draft Guidelines. According to ETUC, “*the right to collective action is a corollary to the freedom of assembly and association, and inherent to the effective exercise of collective bargaining rights. In order for self-employed persons to be able to effectively enjoy their right to collective bargaining and to enforce their collective agreements, their right to collective action also needs to be fully guaranteed and respected. The exercise of collective action by self-employed persons cannot be made conditional on competition rules*”. This opinion was echoed by most trade unions participating in the public consultation.

14.83% of the participants to this public consultation were businesses or business associations, including 6 associations (2.87% of the total) whose main interests relate to their partners’ roles as employers. 14 out of the 31 participants expressed an overall positive opinion towards the draft Guidelines, while 13 considered them a negative step.

In particular, employers’ associations were overall negative towards the draft Guidelines (5 out of 6).¹⁶³ Their main remark was that “*allowing self-employed workers to bargain collectively would have a significant impact on well-established basic rules and interpretations of competition law*” (as put by the Confederation of Finnish Industries (EK).

In a similar way, the business associations that expressed a negative stance (8) do not base their reasoning on the specific content of the draft Guidelines, but rather on their view that the initiative is not wanted by solo self-employed and will not contribute to improving their situation. For example, SMEUnited indicated that “*[f]rom our point of view, [the draft Guidelines] are likely to cause a great deal of practical and fundamental problems. Therefore, we, do not consider it appropriate to issue the guidelines. The position of all entrepreneurs, including self-employed persons, could be improved through direct regulation of contract terms. The unbalanced bargaining position between entrepreneurs is not a new phenomenon, but platforms have risen this problem to a wider awareness. However, a simpler, legally more secure and more proportionate way of balancing the bargaining position at the EU level would be, for example, to improve the Platform to Business regulation and regulation of contract terms*”.

¹⁶³ The exception being the Confederation of German Employer’s Association (BDA), who support the draft Guidelines, arguing that the final version should ensure that collective negotiations are not imposed as an obligation.

Business and business associations expressing a positive opinion on the draft Guidelines include all platform companies that participated in the public consultation, as well as Delivery Platform Europe (DPE), the business association gathering platform companies in Europe. DEP *“welcomes the European Commission’s commitment to ensure EU competition law fits a digital and social EU. Collective bargaining is a cornerstone of the EU social model and we support the EU Commission efforts to preserve this in the platform ecosystem.”* However, platform companies noted that collective bargaining by self-employed should not prompt requalification of people working through platforms from self-employed to workers.

Business Europe expressed an overall positive opinion on the draft Guidelines however submitted that the term “working conditions” should exclude remuneration of solo self-employed.

On collective actions to refuse the supply of labour, platform companies, such as Wolt, submitted that the Guidelines should further clarify the applicable conditions in order to ensure such coordinated actions do not disproportionately harm other self-employed or workers.

Professional associations submitted 14 (6.7%) responses. The associations represent a wide range of different professions, from lawyers and doctors to writers and artists. Out of the 14 associations, the majority (12) expressed a positive opinion about the draft Guidelines.

The two associations that expressed a negative opinion are: (i) Österreichischer Rechtsanwaltskammertag (ÖRAK), who submitted that, because the Guidelines may even worsen conditions for SSE people, instead of adopting Guidelines the Commission and national competition authorities should assess on a case-by-case basis the general principles of Article 101(3) TFEU in cases of collective bargaining by solo self-employed. Specific attention is raised to the fact that the Guidelines are not positive for solo self-employed lawyers and will likely reduce competition between law firms; and (ii) UNAPL - Union Nationale des Professions Libérales, that holds a similar position to that of SMEUnited.

Out of the professional associations that support the draft Guidelines, some expressed a regret that they are not binding (Eurocadres - Council of European Professional and Managerial Staff). Associations representing authors and other creators expressed their appreciation that the draft Guidelines will fill the gap between the application of competition rules and the application of the Copyright Directive (SAA (Society of Audiovisual Authors); GESAC - Groupement Européen des Sociétés d’Auteurs et Compositeurs).

All but one of the 10 public authorities that submitted comments expressed positive opinions about the draft Guidelines. Most of them insisted on the importance of respecting national social legislations and in general suggested some small clarifications.

Finally, for ILO, *“the draft text is a good step forward in the direction of recognizing that collective bargaining rights are not strictly limited to employees, and therefore towards a greater convergence between EU law and ILO instruments”*.

11.5. Second dedicated meeting with social partners on 9 February 2022

The meeting took place after the publication of the draft Guidelines and was focused on the draft text.

From the trade unions' side, the main participants were ETUC; national trade union confederations (the Belgian ACV-CSC and the Polish NSZZ Solidarność) and unions representing specific sectors/individuals (the European Arts & Entertainment Alliance (EAEA), the European Federation of Journalist (EFJ), the service workers' union UNI Europa, and the manager's union Eurocadres). From the employers' side the main participants were Business Europe, SMEunited and SGI Europe.

Overall, both sides expressed support towards the objective of the draft Guidelines, i.e. to clarify when competition law should no longer be an obstacle for specific SSEs to conclude collective agreements. BusinessEurope and SMEunited, though, remained more skeptical about the draft Guidelines insisting that fees should not be covered.

The main general comments were:

- On the role of the social partners: Both trade unions and the employers reiterated that the status of the social partners, through which collective bargaining takes place at national level, should be respected. ETUC seemed to be satisfied about the neutrality of the draft Guidelines on that point.
- On the terminology: the employers' organization reiterated that the wording used in the draft Guidelines (collective agreement, bargaining etc.) was too close to the one used under national labour law/social dialogue. On the contrary, Trade Unions were less opposed to that terminology as collective bargaining is under ILO and the Council of Europe conventions a fundamental right enjoyed by self-employed.
- On the scope of the guidelines: most of the employers' organizations saw the scope of the Guidelines as too broad whilst the trade unions had rather the opposite view.

12. ANNEX 3: WHO IS AFFECTED AND HOW?

12.1. Practical implications of the initiative

The initiative affects various stakeholders as follows:

- For the **genuine** solo self-employed covered by the scope of the guidelines:
 - o The initiative increases/creates legal certainty that, under the conditions specified, collective negotiations and agreements over their working conditions will not infringe EU competition law or will not result in enforcement action by the Commission;
 - o This may have the indirect result of an uptake of collective bargaining over their pay and working conditions with the businesses that rely on their services. Collective agreements for solo self-employed are expected to always cover pay conditions and sometimes other working conditions as well, in line of the few current collective agreements for solo self-employed.
 - o Not all solo self-employed covered by the scope of the guidelines may ultimately conclude or be covered by collective agreements, e.g. because no collective bargaining would occur in their sector, because they would not be covered by an agreement, or because they would choose to remain outside the scope of such agreement.
 - o For those that would be covered by an agreement, the initiative would hence indirectly affect pay and working conditions. On average, collective bargaining is estimated to increase the pay rate of solo self-employed by around 15%. For solo self-employed working for non-micro firms are estimated to be a risk of poverty, the few available data indicate that collective bargaining may increase their pay rate by more, possibly as much as 40%. This would remove the risk of poverty for some solo self-employed with very low incomes.
- For the **false** self-employed people, whose status have not yet been changed to the status of “worker”, and who may fall within the scope of the preferred option, the legal certainty brought would strengthen their bargaining position as their counterparties would no longer convincingly cast doubt about the legality of any collective bargaining right they may have.
- **Platforms and businesses** that rely on services by solo self-employed that are within the scope of the guidelines would be the counterparties of any collective bargaining agreement. These actors would have to (at least partially) fund the increased pay and better working conditions in the first instance. However, there may also benefit from higher productivity of solo self-employed.
- **Consumers** would be indirectly affected as the increased costs for services by solo self-employed may be passed on to some extent. Pass on of a significant part of such costs (likely around 85%) is likely in the case the services provided by solo self-employed form an important part of the variable costs of the platform or business. This would likely be the case for delivery or taxi services. It is less likely for the costs of other services that are part of a businesses fixed costs (such as cleaning services).
- The initiative may also have further indirect economic or social effects. The most likely tangible effects are a reduction in poverty and increased purchasing power amongst solo

self-employed, and savings for member states due to reduced income support and increased income taxes.

12.2. Summary of costs and benefits

These figures reported in the following tables are rough estimates based on the available data combined with reasonable assumptions where necessary (See Section 13 – Annex 4 and the IA Support Study). Nevertheless, due to data limitations and inevitable difficulties in making projections, the figures are subject to significant uncertainty. To some extent, this uncertainty is already reflected in the range of estimates reported.

I. Overview of Benefits (total for all provisions) – Preferred Option			
Description		Amount	Comments
Direct benefits			
Increased legal certainty for self-employed and their counterparties as well as Member State authorities		Not possible to quantify	An estimated 24.6 million solo self-employed would fall under the scope of the guidelines under the preferred option (22.5 million under option 1) and thus would benefit from legal certainty in so far as they would not be hindered by competition law to have collective agreements for their working conditions.
Indirect benefits			
Solo self-employed within the scope of the guidelines that are likely to be covered by a collective agreement in 2030		At least around 8 million under the preferred option (7 million under option 1)	Table 3 above.
Average pay rate increase of those benefitting		+15% (+40% for groups with initially very low incomes)	Based mostly on first collective agreements with platforms. (IA Support Study, Section 3.4.10)
Aggregate increase in income of solo self-employed (2030)		Approx. EUR 25 billion under the preferred option (EUR 23 billion under option 1) [after adjustments for coverage and opt out of collective agreements]	Based on average annual income of solo self-employed. No data available on average income of people working through platforms which represent the bulk of self-employed within the scope of the guidelines. If the average income of people working through platforms is below that of off-line solo self-employed the average monetary impacts will be overestimated. (Calculated based on the methodology and data of IA Support Study, Section 3.5.1)
Number of solo self-employed no longer at risk of poverty in 2030		Around 0.8 million under the preferred option (0.7 million people under option 1)	Based on SILC data on self-employed not working through platforms, which indicate that 10% of individuals are lifted out of poverty (1/3 out of 1/3 at risk) assuming a 40% increase of very low pay rates. This finding is projected to the options considered

		here. (IA Support Study, Section 3.5.3)
Number of family members of solo self-employed that are no longer at risk of poverty in 2030	2.4 million people under the preferred option (2.1 under option 1)	Solo self-employed at risk of poverty live on average in a household with four people (IA Support Study, Section 3.5.3)
Estimated savings in State income support	Possibly on the order of EUR 1 bln	(IA Support Study, Section 3.5.4)

Notes: *Estimates are relative to the baseline for the preferred option as a whole*

(i.e. the impact of individual actions/obligations of the preferred option are aggregated together);

It is not possible to quantify administrative cost savings related to the 'one in, one out' approach. See section 8.3.

II. Overview of costs – Preferred option							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Cost/price increase	Direct costs						
	Indirect costs		Effect on consumers assuming 85% pass-on of costs at most around 0.2% of GDP or EUR 21 bln under the preferred option (19 bln under option 1)		Cost increase not passed on to consumers around EUR 3.7 bln under the preferred option (3.4 bln under option 1)		
	Indirect costs						

Note: It is not possible to quantify cost related to the 'one in, one out' approach and the initiative is not expected to generate such cost. See section 8.3.

12.3. Relevant sustainable development goals

III. Overview of relevant Sustainable Development Goals – Preferred Option(s)
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Relevant SDG	Expected progress towards the Goal	Comments
SDG no. 1 – no poverty	The collective bargaining agreements that are expected to be concluded as an indirect effect of the initiative are estimated to lift around 3.2 million solo self-employed or family members of solo self-employed out of poverty under the preferred option (2.8 million under option 1)	
SDG no. 8 – decent work and economic growth	The very aim of the initiative is to provide legal certainty when competition will not stand in the way of collective bargaining by solo self-employed to improve their working conditions. By 2030 an estimated 24.6 million individuals will fall under the preferred option (respectively 22.5 million under option 1). Of these individuals around 8 million will likely benefit from better working conditions as a result of concluding collective bargaining agreements under the preferred option (respectively 7 million under option 1)	
SDG no 10 – reduced inequalities	<p>By providing legal certainty that collective negotiations/agreements by solo self-employed people who are in a position comparable to that of workers fall outside the scope of Art 101 (under the preferred option as well as under option 1), the initiative reduces inequality between the rights of such solo self-employed and comparable workers. Resulting collective negotiations/agreements will then likely reduce economic and social inequalities between these groups.</p> <p>Under the preferred option, this reduction in inequality further extends to the self-employed in an imbalanced negotiating position covered by the</p>	

	negative enforcement priorities.	
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13. ANNEX 4: ANALYTICAL METHODS

The impact assessment relies on quantification of certain impacts provided by Ecorys in the IA Support Study. The two key elements quantified in that study are: (i) the number of solo self-employed covered under the policy options which were part of the inception impact assessment, and (ii) the expected increase in remuneration that solo self-employed are likely to achieve through collective agreements. The study also provides some quantitative estimates on the likely indirect impacts on aggregate pay increases, consumer prices, poverty and the state budget.

In each of these cases, the quantification is based on combining available data and estimates from different data sources coupled with additional assumptions, where necessary. Due to data limitations and inevitable difficulties making projections, the figures are subject to significant uncertainty. To project data into the future simple linear interpolations are employed. The quantification does not rely on theoretical modelling.

The figures used in the IA Support Study have been adjusted to reflect, to the extent possible, differences in the ultimately designed policy options compared to the four initial options that were assessed in the IA Support Study.

The approach to quantification can be summarised as follows.

Number of platform workers and solo self-employed affected by each policy option:

- In a first step, the number of potentially affected solo self-employed under each policy option (i.e. all the individuals that would fall under the definition of each of the policy options) was estimated by combining data from different sources (including the COLLEEM studies, the EU Labour Force Survey, Eurostat Structural Business Statistics). Specifically:
 - (i) The number of full time equivalent platform workers (which would be covered under any of the policy options) is derived from the PPMI survey for 2021 in combination with COLLEEM data for 2017 and 2018¹⁶⁴. Individuals that indicated that they rely on platform work as a secondary source are given a weight of 50%, while “marginal” platform workers are not considered.
 - (ii) The figures for platform workers are projected forward assuming a linear trend which starts at zero in 2011 and which ends in 2025. After 2025, it is assumed that the number of platform workers would remain stable. The use of a linear trend which ends in 2025 is motivated by the evolution of temporary agency work in the Netherlands between 1990 and 2020, which, after initial rapid growth for around 15 years then seems to have stabilised. The projection for 2030 is reduced by the number of solo self-employed working through digital platforms that are expected to have been reclassified as workers by then, following the Commission proposal on improving working conditions in platform work. The impact assessment of that initiative estimates that this reclassification concerns up to 4.1 million individuals in

¹⁶⁴ PPMI (2021), Study to support the impact assessment of an EU initiative on improving working conditions in platform work, Tables 13 and 14. Available [online](#).

2021¹⁶⁵ which corresponds to 2.5 million full time equivalent platform workers or 18% of the estimated 14.1 million FTE solo self-employed working through platforms in 2021. The projection of FTE solo self-employed working through platforms for 2030 is hence adjusted downwards by 18%.

- (iii) The number of economically dependent workers is based on Eurostat data on the number of solo self-employed that derive 75% or more of their income from one single client. This data was used by Ecorys for the IA Support Study for all European countries in the context of estimating economically dependent workers that are covered by different national measures (for countries falling within country cluster 3).
- (iv) The total number of solo self-employed not working through platforms (which was relevant for policy option 4 in the inception impact assessment) is based on 2019 figures of the Eurostat Labour Force Survey. This was adjusted to exclude solo self-employed farmers, shop owners and food sellers based on statistics from the Eurostat Structural Business Statistics for 2018. As the number of solo self-employed not working through platforms has been quite stable, the resulting figures are also used for subsequent years.
- (v) The percentage of solo self-employed that work for businesses with 10 or more workers (which is used as a proxy for non-micro enterprises) is based on data from a previous Ecorys study for the Netherlands on how frequently businesses of different sizes (by number of workers) hire solo self-employed. This data is combined with data on the size distribution of business across Europe from Eurostat. Absent data for other countries, it is assumed that the hiring practices for the Netherlands can be regarded as representative across Europe. This is then combined with the data on solo self-employed (by country) to estimate the number of (non-platform) solo self-employed working for non-micro businesses.
- (vi) The number of solo self-employed covered by national measures were researched and estimated Member State by Member State in the IA Support Study (IA Support Study, Section 3.4.6).
- (vii) The number of solo self-employed covered by the Copyright Directive is proxied by the Eurostat Labour Force Survey tables on the number of creative and performing artists, authors, journalists and linguists by Member State and the corresponding percentage of self-employed among them in each Member State (Eurostat LFS tables Cult_emp_art and Cult_emp_artpc).
- (viii) Figures for solo self-employed in the offline economy were projected forward to 2030 by linear interpolation over the period 2011 to 2019/20 (or shorter if the full period was not available).
- (ix) The total number of solo self-employed that would be covered under option 1 is estimated as the sum of the estimated number of people working through platforms and the estimated number of economically dependent self-employed in the offline

¹⁶⁵ See Annex 4, Table A4.1 of the impact assessment of that initiative.

economy. No estimate is available for the number of solo self-employed that work “side-by-side” with workers which might underestimate the number of individuals covered. Nevertheless, this underestimation may not be severe to the extent that the group of “side-by-side” solo self-employed people overlaps with economically dependent solo self-employed people. The total number of solo self-employed covered under the preferred option is estimated as the sum of people working through platforms and the sum of the four quantifiable solo self-employed categories (economically dependent solo self-employed, those covered by national measures, those working for non-micro enterprises, and those falling under the Copyright Directive), with adjustments for likely double counting. Double counting was addressed by assuming that the criteria of economic dependency, working for non-micro enterprises and falling under the Copyright Directive are statistically independent events. To avoid double counting with national measures, the scope of the national measure was assessed separately for each Member State. Where required, further assumptions were made on the extent to which the national measures overlap with the other categories. These adjustments are hence subject to uncertainty.

- The figures of solo self-employed that are covered by the options and are hence potentially affected is then adjusted further as follows to estimate the number of solo self-employed that would likely be covered by collective bargaining agreements:
 - (i) For countries where collective agreements for workers do not automatically extend to all workers in the sector, it is assumed that the same would apply to collective agreements by self-employed. The proportion of solo self-employed that would be covered in those countries is approximated by the corresponding proportion of workers covered in the country (based on ICTWSS data or unionisation rates)
 - (ii) Finally, figures are further adjusted to reflect that certain solo self-employed might not wish to be covered by collective agreements. The relevant percentages were based on responses to an online survey conducted for the initiative. However, this last adjustment performed in the IA Support Study is may lead to a significant underestimation of the number of solo self-employed affected by each policy options for two main reasons.

First, opt-out of individuals from collective bargaining is likely to be reflected, at least to some extent, by adjustment (i), because individuals choosing to opt-out are unlikely to be union members and because unionisation rates flow into adjustment (ii) for countries where collective agreements are not automatically extended to non-union members.

Second, the IA Support Study estimates the propensity of opt-out on the basis of responses by self-employed to the Dynata survey. That survey sample was primarily based on individuals participating in frequent flyer programs and was conducted during a time where leisure travel was heavily curtailed by Covid 19 so that interviewees were likely traveling by air for business reasons. For respondents that were not members of frequent flyer programs, participating in the sample required active volunteering by people defining themselves as self-employed. As such

volunteering is unlikely sufficient to make the sample representative for the population overall, the sample of interviewees was therefore likely to be biased towards self-employed that are comparatively not in a weak position and which, in turn, are more likely to feel that they can obtain better terms by opting out of collective agreements than the solo self-employed within the scope of the initiative.

While the quantification of the number of solo self-employed is based on straightforward combinations of figures from different sources and, where necessary, simple assumptions and projections, it is, of course, subject to some uncertainty. To some extent, this uncertainty is reflected and illustrated by the relatively range of figures reported, once the different adjustments are carried out. Moreover, for the reasons explained, the figures after adjustment (ii) represent a lower bound for the number of solo self-employed that would likely be covered by collective agreements in 2030.

Estimates on the effect of collective agreements on the remuneration of solo self-employed.

The average impact on remuneration is based on a review in the IA Support Study of the percentage effect of collective agreements on pay in those instances where platform workers reached collective agreements with their counterparties which is corroborated by data on difference in pay between unionised and non-unionised workers in certain industries in Germany and Austria.

While this resulting estimates on the impact on pay are hence subject to uncertainty, both benefits and costs would scale up or down with variation in this estimate, so that the overall policy conclusion is unlikely to be affected by such uncertainty.

Other indirect quantified impacts

- The IA Support Study estimates the aggregate increase in remuneration of solo self-employed by multiplying an estimated of the average income of solo self-employed with the estimated average increase in pay (15%) and the estimate for the number of people affected. Due to the absence of data on representative incomes of people working through platforms, the estimate of the average income of solo self-employed is based on data for solo self-employed in the offline economy. These figures have been adjusted to reflect the number of people that would likely be affected under the two retained policy options.
- The IA Support Study derives a rough estimate on the effect of the initiative on prices for final consumers is derived by assuming that the 85% of the estimated aggregate increase in remuneration for solo self-employed is passed on to consumers. This figure is based on a study on cost pass-on for the UK Office of Fair Trading. It is likely that Ecorys' estimates overstate significantly the negative impact on consumers as it assumes that all collective agreements would increase variable costs rather than fixed costs of platforms and businesses. As such it should present a conservatively high estimate of the negative indirect impact on consumers. These figures have been adjusted to reflect the number of people that would likely be affected under the two retained policy options.
- The aggregate profit impact on firms is estimated as the part of increase in remuneration of solo self-employed that is not passed on to consumers.

The impact on poverty among solo self-employed people is based on EU-SILC data on solo self-employed people and their families. In line with the observation of higher average pay increases in agreements where the initial level of pay was particularly low, it is assumed that solo self-employed people below the poverty threshold would see their remuneration increase by 40%.

14. ANNEX 5: THE COMMISSION PROPOSAL FOR A PLATFORM WORK DIRECTIVE

On 9 December 2021, the Commission adopted its proposal for a Directive on improving working conditions in platform work. This initiative is based on the social policy provisions of the Treaty,¹⁶⁶ according to which the Commission consulted the European social partners, that is to say European representatives of management and the European representatives of labour, before submitting a proposal.

The proposed directive tackles three core issues: the misclassification of the employment status, algorithmic management, and cross-border transparency.

First, the employment status is the gateway to labour and social rights. The Commission proposes a rebuttable presumption of the existence of an employment relationship that will apply to digital labour platforms that control the performance of work. The proposal puts forward a number of criteria of such control, two of which have to be fulfilled for the presumption to apply, providing more legal certainty at EU level. It also includes a reversal of the burden of proof, i.e. if a platform wishes to challenge the presumption, it will have to present evidence that an employment relationship does not exist.

Second, the proposed Directive sets out a new set of rights on algorithmic management. Currently, there is insufficient transparency regarding such automated monitoring and decision-making systems. People lack efficient remedies in the face of decisions taken or supported by such systems.

Third, the proposal includes provisions to increase the transparency and traceability of platform work, including in cross-border situations. These provisions will help national authorities – such as labour inspectorates – to enforce the proposed directive and existing laws.

The aim of the proposed directive is to ensure adequate working conditions for people active in the platform economy while supporting the sustainable growth of digital labour platforms in the EU.

The proposed Directive has therefore potentially much further reaching and direct consequences than the present initiative in the online economy, as its aim is to ensure that reclassified workers have access to the existing EU and national labour *acquis*, while improving the conditions of all people working through platforms vis-à-vis algorithmic management. The present initiative, on the contrary, is limited to providing legal certainty on the assessment of collective bargaining agreements of certain self-employed people under the competition rules.

¹⁶⁶ See Article 154(2) of the Treaty.